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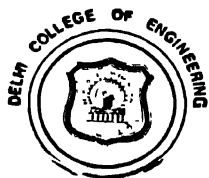
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The Bombay Industrial Relations Act

BOMBAY ACT NO. XI OF 1947

**First published after having received the assent of the Governor-
on 9th April, 1947 in Bombay Government Gazette on 15th April,**

BEING

**An exhaustive, critical and up-to-date commentary
on the Act, along with the comparative study of
the Bombay Industrial Disputes Act, 1938**

A special feature is

Brief Hints to Employers and Employees for urgent reference.

BY

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(Author of 'The Bombay Industrial Disputes Act, 1938)

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WITH A FOREWORD BY

The Hon'ble Sjt. Jagjivan Ram

Minister of Labour, Government of India

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To
THE HONOURABLE
SARDAR SHRI VALLABHBHAI PATEL
(Home Minister, Government of India)
AS
PRESIDENT
ALL INDIA MAZDOOR SEVAK SANGH

This book is by kind permission
respectfully dedicated.

FOREWORD

THE BOMBAY Industrial Relations Act, 1947, which owes its enactment to the initiative and enthusiasm of my esteemed friend, Mr. Gulzarilal Nanda is, in many ways, a very important piece of Labour legislation in India. It has a two-fold purpose, one to set up a comprehensive machinery and procedure for the settlement of industrial disputes, and the other the encouragement of the growth of responsible trade unionism in the country, without which the workers will never have adequate bargaining strength.

Building on the basis of past experience, questions likely to occasion differences of opinion between employers and workers have been listed. Some of them are to be covered by Standing Orders to be settled, after hearing the parties concerned, by the Labour Commissioner, subject to appeal and revision by the Industrial Court. If any modifications are required in the Standing Orders, the case should be argued before the Labour Commissioner or the Industrial Court. In regard to other matters, if either the employer or the employee seeks to introduce a change, they must go through the process of mutual discussion, conciliation, and, if necessary, arbitration. The items set out in the schedules to the Act, though covering most of the points likely to give rise to disputes, are not exhaustive. The residual matters are left to be discussed and settled by joint committees representative of the employers and the trade union organisation in the undertaking or locality concerned. If peaceful attempts at settlement fail, Provincial Government have power to refer industrial disputes, existing or apprehended, to arbitration. Where the Act is applied, there should be few disputes that cannot be settled peacefully.

If this machinery is to function successfully, workers must be properly organised and the Act gives various privileges to well-organised unions. These rights have their counterpart of responsibilities as well, e. g. an approved union must undertake not to resort to strike so long as peaceful avenues of settlement are open or offered to it.

Such in brief are the salient features of the new Act, which seeks to give institutional expression to the now widely accepted

concept that industry is a social institution, which should be administered not only for the benefit of those immediately affected by it, but also of the society as a whole.

The Act is not without its critics. Indeed, which every good measure is !

It is understandable that employers, brought up in the old tradition of regarding Industry as private domain to be managed as they willed, should chafe under the restrictions placed by the Act on arbitrary management. What is more difficult to comprehend is the objection raised by some of the labour leaders to the institutions and procedure set up by the Act. Their chief objection seems to be that the Act abridges the right to strike. They realise that they cannot afford to proclaim an unrestricted right to strike. They are all, they say, for arbitration, provided it is voluntary, but they forget² that their argument is that of the man who says "I shall observe the law when it suits me."

Now, the right to strike, like the right to use force in self-defence, may be an inherent right, but it can be used only as a last resort after all other remedies have been exhausted. It needs no argument to convince people that if every one were to interpret the right of self-defence in his own way, we shall be landed, in no time, in anarchy. Likewise, in the complex economic structure of our times, a strike is not merely the exercise, by an individual, of his right to work or not, but also an organised attempt to stop production, which in many cases, may not only deny the community essential services and supplies, but throw large sections of innocent men and women out of employment and plunge them into misery and unhappiness. The right to organise is a social right. But society has the inherent right to insist that a social right should not be exercised in a manner gravely prejudicial to large sections of people and that, before it is resorted to, all other remedies at peaceful settlement have been tried and failed. Just as in return for the abridgment of the right of self-defence, the individual has been provided with adequate means of vindicating his rights the workers have a right to ask that they should have available to them a properly devised machinery and procedure for securing redress of their grievances and bringing about an orderly transformation of the industrial structure in a manner beneficial to them and to the society. This is precisely what the Act aims at providing.

The working class movement in India is not yet strongly organised, and cannot hope to wield the strike weapon with even that measure of limited success which may have attended its exercise in other countries. An abiding improvement can be brought about only by the steady pressure of public opinion not only of those directly concerned with the industry, but also of the general public. This pressure of public opinion can be effective only if it is properly canalised. The country is now entering upon a grand adventure of freedom, but freedom can unfold itself only through institutions. We cannot have free political institutions and chaotic economic relationships. The dividing line between politics and economics is very thin and unless we have a set of integrated institutions which would provide for a peaceful settlement of the numerous problems arising in every sphere of life, the great adventure of democratic Government on which this country is entering may not prove the success which we all hope and pray it will be. The Bombay Industrial Relations Act is an important contribution to this task and the country will watch its working with great interest.

An important piece of legislation like this requires a clear exposition of its origin and mechanism. I am glad that Mr. Patwari has come forward to undertake this task. He is not new to the field. He has already to his credit a very useful edition of the Bombay Industrial Disputes Act which preceded the present legislation. I commend this book to all interested in industrial relationship and labour legislation.

Jagjivan Ram

PREFACE

A GREAT WAR leaves as its aftermath problems which are not easy to tackle. They baffle the statesman, the economist and the community. The conquerors of the world war of 1914, tried to settle the socio-economic issues facing the world, by creating two organisations—The League of Nations and the International Labour Organisation. The one succumbed before the enormity of the problems it could not tackle and has now been resurrected under the name of U. N. O.; the other had done some useful work to its credit, even though it was limited to fact-finding reports, conventions which may or may not be enforced and recommendations which did not bind anybody. The world finds itself at the second world war more miserable and aware of the great conflict in every part of the world between the 'haves' and the 'have-nots'. All social measures which find ways and means to eliminate Industrial warfare and which seek to bring relief to the exploited masses are, therefore, welcome.

The resumption of administration by Congress Ministries in 1946, after five years of Section 93 Administration had come as a welcome relief. The popular Government of Bombay had to tackle a number of problems but the foremost among them were the questions of the Peasant and the Industrial worker. It is admitted by all groups that these questions have been handled by the Congress Ministry admirably and courageously.

The development of modern industrial world has brought in its train an increase of industrial strife all over the civilised world and obviously much of the prosperity of the people depends on industrial peace with the uninterrupted production. When the wave of industrial unrest is passing over everywhere, a heavy responsibility comes on the Government. It has to requisition all the resources at its command for creating a sound basis for industrial relations by securing goodwill and co-operation of the community. If this purpose is to be effectively achieved, Government should evolve an efficient machinery to bring about settlements of disputes—major or minor—which are capable of leading to strikes or lock-outs. The success of the new Legislation can, therefore, be well measured by its success in the maintenance of industrial peace and by the number of strikes it can avert, without impairing or diminishing the interests of labour. We congratulate the Minister of Labour to the Government of Bombay, the Hon'ble Sjt. Gulzarilal Nanda, who has brought

to bear all his experience of three decades of labour work in the shaping of the present Act.

Sjt. Nanda being the Secretary of the Ahmedabad Textile Labour Association for years, and having intimate knowledge of the workers as well as the employers was conversant with the best methods calculated to safeguard the worker's rights without impairing the interests of the Industry. The Textile Labour Association has a unique record of settling individual and general grievances by direct negotiations with the employers and sometimes by recourse to arbitration; the attitude of an Ahmedabad employer being also very considerate and conciliatory. Indeed, all honour to Mahatma Gandhi for initiating the principle of arbitration in Industry for the first time in 1918, when he led the workers in their fight which lasted 22 days. It was during this struggle that Mahatmaji had his first historic fast and eventually the matter was referred to the arbitration of the late Acharya Anandshankar Dhruva. At the successful termination of the struggle Mahatmaji observed: "This struggle has vindicated two principles; firstly, workers have stood firm and remained true to their pledge; secondly, if there is a dispute on a substantial matter between the two parties, it should not be decided by a strike but by arbitration. The settlement does not include a term that both parties shall refer all future disputes to arbitration, but since the settlement has accepted the principle of arbitration, it can be assumed that it will be so on such other occasions".*

The machinery of voluntary conciliation and arbitration that has thus been evolved in Ahmedabad under the direct inspiration and guidance of Mahatma Gandhi has worked for more than 20 years and both the parties have adhered to it even under strained relations, on some occasions. This brought in its turn to Ahmedabad an unprecedented industrial peace which is mainly responsible for the expansion of the industry on one side, and the growth of a healthy labour force on the other. The working class of Ahmedabad has also developed socially, politically and morally and has attained the status of citizenship, enabling it to take its due share in rights and responsibilities of civic and political life of the City.† In the

* See 'Dharmayuddha' by Sjt. Mahadevbhai Desai.

† According to the computations of Mr. Kotdawala, the author of the learned treatise 'Industrial Labour welfare', during the period of 1928 to 1940 there were 249 strikes in Ahmedabad as against 343 in Bombay. The corresponding figures for lost days and wages in the period were 7, 22, 881 days and Rs. 956. 045 for Ahmedabad as against 40, 445, 624 days and Rs. 50, 209, 560 for Bombay.

period of the second World War also the workers of Ahmedabad, inspite of their highest wages in the country, obtained the highest Dearness Allowance upto Rs. 77/- per month and in addition fairly good amounts of yearly bonuses.

The experience gained from the working of the Bombay Industrial Disputes Act of 1938 has been well utilised by thoroughly remodelling and streamlining it so as to meet the present needs.

The very title of the New Act "The Bombay Industrial Relations Act" is suggestive of the fact that it covers a much larger scope and seeks to regulate all matters included in the relations between the employer and his employees. The establishment of the Joint Committees, will, if properly worked, enable the parties to appreciate each other's viewpoint and unless one of them is deliberately perverse, the machinery will succeed in eliminating disputes at an early stage. Personal contacts between workers and the management will go a long way in removing angularities and will create a proper psychological atmosphere. The establishment of Labour Courts is also a great innovation. The number of disputes in the industrial field are as many and as varied as in civil and criminal courts. The administration of Standing Orders has left such bitterness in the minds of the workers that unless Courts were instituted to test on merits, the propriety or otherwise of punishment meted out under Standing Orders, it leads to distrust and conflict. As in the old Act, the corner stone of this Act which governs the whole scheme is the compulsory system of conciliation, unless arbitration is available. Arbitration under the Act is voluntary, except the Government being given powers to refer cases to the Court in special cases. In a country like India, where labour organisations are yet in an infant stage, workers will need the help of arbitration Courts to secure justice from the employers. An Act which makes it possible to shape industrial relations through awards rightly deserves to be styled as a measure "to democratize relations between Labour and Capital". In the cause of industrial peace the results of arbitrations during and after this war speak for themselves.* It has been the general demand of statesmen that "in industrial matters, let it be as thoroughly understood as in international affairs that disputants must arbitrate before they fight." We know that there is a school of thought in the country which opposes the idea of compulsory arbitration. Government have done well to steer a middle course

* Cf. Mr. Kothawala's 'Industrial Labour Welfare' pp. 128 to 134.

by providing arbitration only in cases where both parties are willing. Nobody can, however, say that Government should keep aloof when capital and labour are fighting each other causing thereby loss of production and affecting the interests of the community. Government have, therefore, taken powers to refer disputes to arbitration of the Industrial Court in certain contingencies. Those who feel that workers can secure a better deal by putting up a fight than through the machinery of arbitration are labouring under a delusion. It may be in a few cases that labour may secure what it wants but in the long run, since capital has a greater power to bring workers to submission by starving them, direct action can never be termed a better means than arbitration. From records of industrial disputes we find that it is the worker who is more eager to secure arbitration rather than the employer and if Government is not empowered to refer disputes to arbitration, Government cannot give protection to labour or avert strikes even when workers desire it.

India is at present on the threshold of a new political era. Government would have to face many issues on the transference of power to Indians. Industrial peace is the first requisite to secure maximum production and raise the standard of life of the workers. We hope the new Act will serve as a useful agency in achieving this purpose.

Under this Act, the Industrial Court is converted into an appellate Court. It had during its life of eight years inspired a great confidence of all—the workers, the employers and the community. It shall have to play higher role in future.

The annotated edition of the Bombay Industrial Disputes Act, 1938, published by the author received an excellent support from the Bench, the Bar, the industrial community including employers and workers and the Government, both Central and Provincial. A second edition was an immediate demand but as the Act was being overhauled we had to remain content by publishing a Supplement, keeping the reader in touch with the latest position of law. After the passing of this Act, therefore, there has been an overwhelming demand from all concerned for the immediate publication of a Commentary on this Act.

The method of arrangement adopted in this publication will be obvious even on a casual perusal. The sections of the Act which have undergone an amendment or alteration from the sections of

the Bombay Industrial Disputes Act, 1938, are clearly and comparatively explained. The case-law of the Industrial Court and the High Court and the principles laid down by eminent arbitrators in various awards have been accurately digested under appropriate headings and sub-headings, and the distinction in application, if any, is minutely pointed out. Table of cases and exhaustive Subject-Index will enable the reader to find out instantaneously the point he wants to refer. The provisions of the Act are briefly summarised in the chapter on "Brief Hints to Employers and Employees", which will be of great use to all concerned for quick and urgent reference.

The book has to be divided into two volumes to cope with the immediate and pressing need of those concerned with the Act. As some time has to pass in the publication of rules, forms and notifications, we have deemed it proper to publish them in the second volume along with the Standing Orders, if remodelled, along with the case-law on it. The Bombay Industrial Disputes Act, 1938, will also be inserted in the next volume to facilitate the task of comparison and contrast with the present Act. All the materials, including the various appendices referred to in this volume, for making the book complete and exhaustive will be supplied in the said volume. It will reach the hands of the reader as soon as possible.

The author owes a debt of gratitude to several gentlemen for various suggestions and aid. The Hon'ble Sjt. G. V. mavalankar and Sheth Sakarlal Balabhai have evinced always a keen interest in the publications of the author. My thanks are due also to Sjts. Khandubhai Desai and Somnath Dave of the Textile Labour association for help in various directions. My colleagues Sjts. Jayantilal B. Mehta and Satyendra K. Jhaveri have contributed much to make this volume a success. Their co-operation has made the compilation a pleasure, and because of their efforts it is possible to issue the work with confidence and pride. I can't forget the good assistance given by my wife Savita Patwari, Sjts. P. D. Patwari and V. B. Kotdawala. I must also thank Sjt. K. K. Shastri for going through all proofs althrough; and also Sjt. Khushalbai of Shripat Gordhandas and Co. for solving the difficulty of getting uniform paper; and last but not the least Sjt. Sureshchandra Popatlal of the Diamond Jubilee Printing Press for good assistance in printing this book.

I am very grateful to the Hon'ble Sjt. Jagjivan Ramji, Labour Member, to the Government of India for sparing time for

contributing a nice foreword to the book. Equally grateful to the Hon'ble Sardar Shri Vallabhbhai Patel, Home Member, the Government of India and the President of the Mazdoor Sevak Sangh for accepting the dedication. It is a great and proud privilege that both the personalities, the highest Labour official and the highest unofficial Labour head, are associated with the publication.

The author trusts that the publication will be found helpful by all classes. As the publication has come out a bit hurriedly, inaccuracies and deficiencies are bound to occur. I crave the indulgence of the reader for the same. Any criticisms or suggestions calculated to improve the publication will be gratefully received and given every consideration.

6, Pritamnagar
Ahmedabad, 30th May, 1947

Prabhudas Balubhai Patwari

BRIEF HINTS TO EMPLOYERS AND EMPLOYEES,

Scope of the Act and operation :—This Act applies to all the industries to which the Bombay Industrial Disputes Act, 1938, was applied, *viz.* the cotton textile, hosiery and silk industries and Banking Companies in the Province of Bombay. (See s. 2 and p. 44.). It may be further applied to any trade, business, manufacture, undertaking, calling, service or handicraft, and even agriculture and agricultural operations, which are included in the term "industry". (See s. 3 (19) and p. 59.). The operation of the Act is not confined only to the disputes arising from civil or contractual rights. Questions are not to be decided only on legal points, but also on equitable considerations as to what is just and fair between the parties. (See pp. 40, 230.).

Employers and their associations :—Under s. 3 (14) the term "employer" covers contractors, local authorities and groups of employers. A combination of such employers, with the object of regulation of conditions of employment in the industry, may be recognised by the Provincial Government as an "Association of Employers" to represent the employers in any industry. Such an association of employers can be specially authorised to represent even non-members. When no such association of employers exists, the Government will prescribe the manner of determining the representative to act on behalf of the employers who are affected. (See s. 27.) Such an association of employers will be the representative of employers, and will be entitled to appear and give or receive notices or intimations, on their behalf. (See p. 108.)

Employees and their trade unions : *Employees :—*Under s. 3 (13) the term "employee" means clerks and menials and does not include supervisory staff, technical assistants and officers, who are not engaged in any clerical or manual work, contract labour employed for execution of some work which is not ordinarily a part of the undertaking, and persons who are discharged or dismissed from employment for any reason other than an industrial dispute, relating to which a notice of change is given or application to a Labour Court is made under s. 42. Such persons will not have the rights of employees under the Act. (See s. 3 (13) and pp. 51-55, 205.)

Trade Unions under the Act :—Under s. 3 (38) any union of employees which is not registered under the Indian Trade Unions Act, 1926, will not have any standing under the Act.

(a) *Registered Union* :—At any time there will be only one registered union in respect of any industry in any local area, on the principle that a larger union will supersede the smaller union. (See s. 14 proviso (i) and pp. 88, 90, 91.). Any union with a membership of not less than 15 per cent. of the employees in any industry in any local area during the three months preceding the date of its application will be entitled to be registered as a Representative Union for such industry for such local area. (See s. 13 (1), Application form in Appendix I A and p. 88.) In the absence of a Representative Union, any union with not less than 5 per cent. membership during the three months preceding the date of its application will be registered as a Qualified Union for the industry for the local area. (See s. 13 (2), Application form in Appendix I A and p. 88.) In the absence of both the Representative Union and the Qualified Union, any *approved* union with membership not less than 15 per cent. of the employees, even in a single *undertaking*, will be entitled to be registered as a Primary Union for the industry in the local area. (See s. 13 (2), Application form in Appendix I A and p. 89.) Such a registered union may be registered under section 22 in respect of an industry for more than one local area. A duty is imposed on such registered unions to submit periodical returns under s. 19.

Cancellation and re-registration :—Under s. 15 the Registrar is bound to cancel the registration of an union, if the Industrial Court orders to do so or if the registration is cancelled under the Indian Trade Unions Act, 1926. For other grounds of cancellation, including aiding or assisting the commencement or continuance of a strike which is held to be illegal, the Registrar shall cancel the registration, after holding such inquiry, if any, as he deems fit. Any union whose registration has been cancelled on the ground of fall in membership below the requisite minimum or of a mistake, will be entitled to be re-registered under s. 17. But if the registration is cancelled on other grounds, the union will not be entitled to apply for re-registration save with the permission of the Provincial Government. This provision may be particularly borne in mind by unions which may instigate, aid or assist an illegal strike. (See pp. 91-93.) An appeal shall lie against these orders of the Registrar under s. 20. (See. pp. 95-100.)

(b) *Approved Unions* :—Except in the case of a Primary Union, it is not necessary that a registered union shall be an *approved* union. The approved union fulfils certain statutory obliga-

tions specified in s. 23 (see p. 103), and therefore, it is conferred statutory rights under ss. 25 and 26, including the right of inspecting any place where its members are employed, collecting union dues on the employer's premises, and of legal aid in important proceedings. (See pp. 105-106 and Application form for being entered on the approved list in Appendix I A.)

Removal from approved list :—Under s. 24 the Registrar is bound to remove the union from the approved list if its registration under the Indian Trade Unions Act, 1926, is cancelled; while in case of enlistment under mistake, misrepresentation or fraud, and of failure to comply with the requisite conditions specified in s. 23, he shall remove it, after holding such inquiry, if any, as he deems fit. In case of orders of the Registrar under chapter IV relating to approved unions there is no provision for an appeal. (See p. 104.)

Representation and appearance on behalf of:—

(a) **Employers :—**The association of employers or in its absence the representative determined in the prescribed manner will be entitled to represent the employers and give or receive notices or intimations or appear on their behalf. (See s. 27 and pp. 107-108.)

(b) **Employees :—**The representative of employees entitled to act under s. 30 shall represent the employees, except that under s. 33, the employee may in the cases specified therein appear through any other person. The Labour Officer shall also be entitled to appear in any proceeding, except where the employees are represented by the Representative Union. (See ss. 33, 34 (5), (6) (a).)

Representative of employees :—The Representative Union is *ipso facto*, the representative of all the employees in the industry in the particular local area, even if none of the employees affected by the change belong to it. In its absence, the Qualified or the Primary Union will be entitled to act, as the representative of employees if more than 50 per cent. of the employees affected by the change belong to it, or when it is authorised by the employees concerned to represent them even though such employees may not be the members of such union. When there is no registered union entitled to act as the representative of employees, the Labour Officer, if authorised by the employees or the elected representatives under s. 28, in order of preference, will be entitled to act as the representative of employees. Such annually elected representatives or if the number of employees in any occupation does not exceed ten, the employees themselves may act or they may authorise any Quali-

ried or Primary Union to act instead of them. In the last resort when there are no elected representatives as well, the Labour Officer shall act as the representative of employees. (See s. 30 and pp. 111-117.) Such representative of employees shall represent all the employees in the industry in the local area for the purposes of this Act. They can give or receive notices or intimations, negotiate and enter into binding agreements, settlements etc., except that the Labour Officer cannot enter into an agreement or settlement, unless the terms are accepted by the employees. They can also appear in any proceeding under the Act, unless the employee wants to appear through any other person. But it seems they cannot commence proceedings or file complaints under the Act on behalf of the employees. (See pp. 117-120.)

Labour Officer:—See chapter IV for powers and duties of the Labour Officer. (See s. 34 and pp. 123-24.)

How changes may be effected?—The Act divides in three schedules all industrial matters relating to employment, work, wages, hours of work, privileges, rights or duties of employer or employees, or the mode, terms and conditions of employment, etc. (See s. 3 (18) and pp. 56-59.) Schedule I contains ordinary routine matters which are regulated by the standing orders, which will go to the Commissioner of Labour or a Labour Court. (See pp. 136-137, 299-301.) Schedule II contains all important matters with which the employer is more concerned, and which will go to the Conciliator. (See pp. 137, 301-317). Schedule III contains only such matters which form subject matter of complaints by employees and which will be referred to a Labour Court. (See pp. 136, 318-319). These schedules play a very important role in the working of the Act and the Government alone has the power to modify them as provided in s. 113. (See pp. 279, 298.)

Nature of change:—Any alteration in an industrial matter, which is likely to lead to an industrial dispute or to affect adversely the conditions of employees, is deemed to be a change under the Act. (See s.3 (8) and pp. 50, 51, 135.)

(1) **Change in matters in Schedule I:**—Standing orders regulate the matters in Schedule I, and these standing orders can be changed only after a period of one year by applying to the Commissioner of Labour. (See ss. 38-39 and p. 136.) But if the employee desires a change not in any standing orders as such but in any order passed by the employer under the standing orders, or

regarding application or interpretation of standing orders, he shall approach the employer under s. 42 (4) with a request for a change in the first instance. If no agreement is arrived at within the prescribed period, he will have to apply to a Labour Court under s. 79 within three months of the arising of the dispute on the expiry of the period prescribed for arriving at an agreement. (See ss. 42 (4), 79 (1), (2), Form of application in Appendix IA and pp. 136, 223-24.)

(ii) *Change in matters in Schedule III* :—The employer is at liberty to make any change in respect of these matters. (See p. 138). The employee has to approach the employer with a request for the desired change under s. 42 (4), and if no agreement is arrived at, to apply to a Labour Court under s. 79 within three months of the last approach to the employer. (See s. 42 (4) and 79, (1), (2), Form of application in Appendix IA and pp. 136, 224.)

(iii) *Change in other industrial matters* : (a) *Notice of change* :—If the employer desires a change in matters in Schedule II, or an employee desires a change in any industrial matter not specified in Schedule I or III, a notice of change in the prescribed form is obligatory to be given to the other party. (See s. 42 (1) (2), (3), Forms of notice of change in Appendix IA and pp. 137-144.) In case of employees the notice is to be given and received by the representative of employees.

(b) *Negotiations and agreement* :—After discussions and negotiations between the employer and the representative of employees, the parties may arrive at an agreement under s. 44 within seven days of the service of notice of change, special notice or intimation or within the period fixed by the parties for arriving at an agreement. Such agreement will then be signed and forwarded to the Registrar for registration and publication. (see s. 44 and pp. 145-147.)

(c) *Conciliation and settlement* :—Where no agreement is arrived at within the period prescribed in s. 44, the dispute shall be referred to conciliation under s. 54 by the party desiring the change within 15 days of the service of notice of change, special notice or intimation or within one week of the period fixed for arriving at an agreement, except in cases where arbitration is available or a notification is issued under s. 114 (2) making the agreement, settlement, submission or award in some other dispute binding in the case. (See ss. 54, 64, Form of statement to be sent in Appendix IA and pp. 171-174, 178-180.) If a settlement is arrived at, it will

be signed and a copy will be forwarded to the Registrar for registration and publication. (See s. 58 (1).) If the Conciliator fails to bring about a settlement, a report will be sent to the Government, which may refer the dispute to a Board of conciliation or publish the report. (See ss. 58-59.) Such conciliation proceedings are deemed to have been completed when the settlement is signed, or submission is entered into, or the report of failure of conciliation is published or if no period is fixed either by the parties or by the Government, at the end of one month, whichever is earlier. (See ss. 62-63 and pp. 181-182.) After the completion of conciliation proceedings the desired change can be effected or enforced by direct action, within two months thereof, except when the dispute is referred to arbitration.

(d) *Arbitration and award* :—Under s. 66 the employer and a registered union which is the representative of employees or under s. 58 (6) the parties to a conciliation proceeding may enter into a written agreement to submit any present or future industrial dispute to the arbitration of any person or of a Labour Court or the Industrial Court. (See ss. 58 (6), 66 and pp. 185-86.) If no appointment of an arbitrator is possible, the dispute shall be referred by the Provincial Government under s. 71 to the arbitration of a Labour Court or the Industrial Court. The Provincial Government may also under s. 72 refer any industrial dispute between employees and employees to such compulsory arbitration of a Labour Court or the Industrial court and in case of other industrial disputes where consequences contemplated in s. 73 (1) are likely to ensue or the dispute is not likely to be settled by other means or it is in the public interest to do so, they may be referred to the compulsory arbitration of the Industrial Court alone. (See ss. 71-73 and pp. 211-213.) After such arbitration, no conciliation proceedings will be commenced or continued under s. 64. Such proceedings will be deemed to have been completed when the award is published. (See s. 76.) Also under rule 81 A of the Defence of India Rules which has been continued by the Emergency Provisions (Continuance) Ordinance, 1946, the appropriate Government has wide powers to refer any trade disputes to compulsory conciliation or adjudication and to prohibit direct action without giving a proper notice and within two months of the completion of such proceedings, if it is necessary or expedient to do so for securing the public safety or maintenance of public order. (See pp. 213-218.)

(iv) *Changes to be proposed in a Joint Committee* :—The present Act has provided another substitute for a notice of change for carrying out discussion and negotiations by introducing the device

of Joint Committees. Wherever a Representative Union exists or where more than 15 per cent. of the employees in any undertaking are members of a registered union, a Joint Committee will be set up, if both the employer and the registered union so agree. Any change other than a change in any standing order can be proposed in such a Joint Committee. If a decision is arrived at, the agreement will be signed, registered and published under s. 52 (1). If no such agreement is arrived at, within a week of the decision by the Joint Committee, conciliation proceedings will be commenced under s. 52 (2) by sending a special intimation (See s. 52 (2) and Form in Appendix I for the special intimation); or the Labour Court will be moved by a special application under s. 52 (3) in case of matters specified in s. 78 (1) (A) (a), falling within its purview. (See Chapter IX at pp. 167-168.)

Illegal change :—Any change in an industrial matter in Schedule I or II, which affects adversely the condition of employees or which is likely to lead to an industrial dispute—(i) without following the aforesaid prescribed procedure for effecting such change; or (ii) before the date on which the settlement or award comes into operation; or (iii) after two months of the completion of conciliation proceedings; or (iv) in contravention of a binding settlement, award or registered agreement, during the period it remains in force under s. 116, shall be deemed to be an illegal change under s. 46. Generally the employer will make an illegal change, but the employees will also be deemed to make an illegal change, if they fail to carry out the terms of a binding settlement, award or registered agreement. (See s. 46 and pp. 148-161). For decision of illegal change a Labour Court will have to be approached, which has also power to require the employer to carry out a change or to withdraw an illegal change within the time specified in its order, or if no time is specified within 48 hours of the making of the order. For failure to comply with such order the employer is punishable under s. 106. (See ss. 78 (1) (c), 47, 106). The employees cannot go on a strike only for the reason that the employer has made an illegal change or contravened the standing orders. (See s. 97 (c).) Penalty for an illegal change is provided in s. 106, where the Court is empowered to award compensation to an employee directly and adversely affected by the change, while contravention of a standing order is punishable under s. 107, where there is no liability to compensate the employee concerned. The employee failing to carry out the terms of a settlement, award or registered agreement will be punished under s. 109. (See pp. 275-277).

Labour Courts :—The Act provides for the first time for the constitution of Labour Courts having jurisdiction in one or more local areas. A Labour Court will have powers to decide :— (i) disputes arising out of orders passed under standing orders, or (ii) relating to the application or interpretation of standing orders, or (iii) regarding changes in matters in Schedule III, or (iv) industrial disputes referred to its arbitration, or (v) whether a strike, lock-out or any change is illegal under the Act, and to require the employer to withdraw an illegal change or carry out any change, provided it is a matter in issue before it. It has also further powers of a Presidency or a first class Magistrate to try offences under the Act committed within its jurisdiction. (See s. 78 and pp. 223–226; for commencement of proceedings, including period of limitation see pp. 226–231). No decision, order or award of a Labour Court can be questioned in any civil or criminal court, except that an appeal shall lie within thirty days to the Industrial Court, except in case of awards or decisions whether a strike or lock-out is illegal or not. (See ss. 84, 86 and pp. 236, 244–246.) The Industrial Court shall also exercise superintendence over Labour Courts. (See s. 85.) The order, decision or award of a Labour Court will under ss. 114–115 bind the parties and their representatives or persons represented by them. (See ss. 114–115 and p. 284.)

Industrial Court :—The Industrial Court will now exercise only (i) appellate jurisdiction from the decisions of Labour courts, the Registrar, the Commissioner of Labour; (ii) decide industrial disputes referred to its arbitration or matters referred to it by the Conciliator, the Board of Conciliation, the parties, the Provincial Government, a Civil, Criminal or Labour Court or by the Commissioner of Labour; and (iii) will exercise superintendence over Labour Courts. (See ss. 87–88 and pp. 238–240.) Any order, decision or award of the Industrial Court will be binding on the parties, the representatives in interest and persons represented by them. (See ss. 94, 115 and pp. 243–244; 284.) Such order, decision or award is not open to appeal or review and cannot be called in question in any civil or criminal court. (See s. 95 and pp. 244–246.)

Illegal strike or lock-out : *Strike or lock-out* :—Before any cessation of work or a closure of the undertaking can be declared illegal, it must be proved that such action amounts to a strike or lock-out under s. 3 (36) or (24). The essential ingredient is that such cessation of work or closure must be in consequence of an industrial dispute. Therefore, cessation of work on the Foundation

or Anniversary day of the Labour Union, or on the Independence day or for taking part in elections or for other political or festival reasons, because the workers were in a holiday mood, will not amount to a strike, nor will be deemed to be an illegal change. Similarly, a closure of the undertaking in the memory of the Founder or in celebration of a rejoicing event at the sweet will of the employer will not amount to a lock-out, although the action may amount to an illegal change, if it is not justified under the standing orders. Another essential ingredient in case of a strike is *concerted action* or simultaneous stoppage of work under a common understanding. Similarly, in case of a lock-out another important ingredient is that the closure must be *intended to compel the acceptance of a term or condition, affecting employment by those very employees or other employees of the employer or any other employer*. (See s. 3 (36) and (24) and pp. 60-62, 65-70.) Strike or lock-out does not take place when a notice to resort to such action on a future date is given, but when there is actual cessation of work or closure. (See p. 60.)

When direct action illegal :—Any strike or lock-out commenced or continued in the following circumstances is illegal :— (i) where it relates to an industrial matter in Schedule III, or I (which is regulated by a standing order); (ii) without giving a notice of change; (iii) before the commencement or completion of conciliation proceedings or after two months of their completion; (iv) where arbitration is available, before completion of arbitration proceedings; or (v) in contravention of the terms of a settlement, award or registered agreement. Also the workers cannot resort to a strike only for the reason that an illegal change is made or that the standing orders are not carried out. (See ss. 97 and 98 sub-ss. (1), (2) and pp. 251-262). Direct action is prohibited only in cases of petty disputes involving no substantial issues, relating to matters in Schedule I or III, or in contravention of a binding settlement, award or registered agreement or where arbitration is available. In other cases the right of direct action is postponed only, till the completion of conciliation proceedings, after which within two months it can be exercised. For decision whether a strike or lock-out is illegal, an application is to be made to a Labour Court within three months of its commencement. (See s. 79 and Application Form in Appendix I). No appeal lies under s. 84 against this decision. The Provincial Government may make reference to the Industrial Court under s. 99 whether any proposed direct action is illegal or not.

Penalties :—Ss. 102-103 provide penalties for commencement or continuance of an illegal lock-out and illegal strike, and s. 104 provides punishment for instigating, aiding or assisting such illegal action. Illegal acts committed whether before or after the declaration of illegality are all made penal. The decision of illegality is necessary only for starting the prosecution, and not for rendering the action illegal. Under ss. 102-103 the illegal action must have actually commenced, while under s. 104 instigation etc. thereof is punishable even if the action is merely intended and is not resorted to and the Industrial Court declares it to be illegal under s. 99. Continuance is punishable only after the date of conviction for commencement of the illegal action, if 48 hours have elapsed after the decision of illegality. (See ss. 102-104 and pp. 272-274.) It is not that all illegal strikes or lock-outs are punishable. Ss. 97 (3) and 98 (3) provide an exemption clause, in cases where direct action is not prohibited but only postponed and in case of a strike as a result of an illegal change or non-observance of standing orders, to the effect that no penalty shall be inflicted if such direct action is commenced after a 14 days' clear notice, within six months thereof, if the workers resume work or the employer discontinues the lock-out within 48 hours of the decision of illegality unless such declaration of illegality is made under s. 99 during the notice period. Also under the proviso to s. 104, instigation etc., is not punishable, if a reasonable doubt exists at the time of the commencement of the offence about the legality of the action. (See ss. 97 (3), 98 (3) and pp. 262-263.) Under this Act, if the management judges for themselves the illegality of the action and takes disciplinary action by way of suspension or dismissal in case of a strike which has not been held to be illegal, there will be victimization. In such a case under s. 101 (2) it will be also victimization to lock-out the employees, unless they have refused arbitration when offered or if they have failed to resume work within a month of the declaration by the Government that the strike has ended. Also if the strike took place in retaliation to an unfair labour practice by the employer, even though it might be without notice and illegal, the management cannot take disciplinary action, and the right of reinstatement with all back pay of such improperly discharged strikers is not affected, except in case of serious misconduct or violence to person or property. (See s. 101 and pp. 269-70.)

Courts of Enquiry :—S. 100 provides for setting up of Courts of Enquiry by the Provincial Government to inquire into such industrial matters as may be referred to them. Such expert

investigation will help the Government to remove the causes of unrest even before a dispute arises. (See p. 264.)

Victimization :—S. 101 (1) provides that the employer shall not terminate the employment of an employee by discharge, dismissal or reduction, or punish him in any other manner only for the reason that—(i) he is an officer or member of a union which has applied for registration, whether registered or not, or of any organization the object of which is to secure better industrial conditions, or even if there is no such object, if it has not been declared to be unlawful; or (ii) he is entitled to the benefit of a registered agreement, a settlement, submission or award; or (iii) he is a representative of employees; or (iv) he has appeared or intends to appear as a witness in any proceeding under the Act; or (v) he has gone on or joined a strike, which has not been held to be illegal. Under this Act, therefore, the employer cannot judge the illegality of the strike and take disciplinary action for misconduct under the standing orders, unless the strike has been held to be illegal. He is further prohibited under s. 101 (2) from locking-out such employees who return to work within a month of the declaration by the Government that the strike has ended, if they have not refused arbitration when offered by the employer. The burden of proof has now been cast under s. 101 (5) on the employer to prove that he has not victimized the employee. Also under s. 101 (4) the employee concerned may be compensated by the Court out of the fine recovered from the employer. (See s. 101 and pp. 268-271.)

Record of Industrial Conditions :—An elaborate arrangement is made in s. 111 for maintenance of records of industrial conditions, whose accuracy will be verified by an inquiry by the Government under s. 112 through officers specially authorised for the purpose. (See ss. 111-112 and pp. 278-279.)

Binding effect and period of subsistence of a registered agreement, etc. :—S. 114 (1) provides that a registered agreement, a settlement, submission or award will normally bind the parties and their representatives. In case of an employer, his representatives in interest in respect of the undertaking will be bound by it, and in case of a registered union, all its present and future members will be bound by it. But if such registered union acts as the representative of employees the binding effect will further extend to all the present and future employees in the industry in the local area affected by the dispute as they are all deemed to be

parties thereto. Also if such registered union is a Representative Union, the Provincial Government can direct under s. 114 (2) that the binding effect will also extend to such other employers and their employees in such industry or occupation in the local area, after giving them an opportunity of being heard. (See s. 114 and pp. 281-284.)

S. 116 (1) and (3) provide that a registered agreement or a settlement or award shall be in force for the period stated therein, unless it exceeds one year in which case it may be terminated after the expiry of one year by a two months' notice; or if no period is specified therein, at least till the expiry of three months from the date of its operation, after which it may be terminated after a two months' notice. S. 116 (2) further provides that even during the time such registered agreement or settlement remains in force, it is open to both the parties to supersede it by a fresh agreement or settlement. But the award is an act of a third party which alone can be moved to amend it and the rights under an award cannot be waived even by mutual consent. Contracting out of an award is forbidden, and such attempt by an employer even with the consent of the employee will be an illegal change. Where both parties are not willing to modify the terms of an existing, binding registered agreement, a settlement or an award, the party desiring a change must first terminate it by the requisite notice, and thereafter give the notice of change, for no change can be effected or enforced by direct action in contravention of a subsisting registered agreement, settlement or award. For the parties who are competent to give the notice of termination and the manner of giving it, see s. 114 (4), (5) and explanation. (See pp. 286-288.) A submission will be governed by s. 67 and it will be irrevocable in the absence of a provision to the contrary or unless it relates to future disputes and is revoked by a six months' written notice to the other party. (See pp. 186, 208.)

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STATEMENT OF OBJECTS AND REASONS

Gulsari Lal Nanda

(Minister of Labour, Government of Bombay)

The Bombay Industrial Disputes Act of 1938 has been in force for the last eight years. The provisions of the Act have been availed of extensively by the employers as well as the employees in the textile industry, to which alone the Act has so far been applied. It has to a very large degree served the purpose for which it was intended. With the passage of years and on the strength of the experience gained during this period it has, however, become necessary and possible to build further on the same foundations.

This Bill cuts new ground in several directions.

(1) Government seeks to achieve its declared object of facilitating the organisation of labour by creating a list of approved unions, introducing a category of primary unions, removing for the purpose of registration the condition relating to recognition by the employer, bringing down the minimum membership for a representative union from 25 to 15 per cent. and reducing the qualifying period from six to three months. An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability of industry and the progress of sound trade unionism. Even a small beginning in this direction in the shape of a primary union having as members 15 per cent. of the employees in a single undertaking is given a place and a function in the new scheme. The range of activities of a registered union is enlarged by enabling it to act as a representative of employees on behalf of non-members, who may choose such a union for the purpose of representing them in any proceedings.

(2) Provision is made for the maintenance of a list of approved unions and all registered unions that satisfy among others certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts, and the avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court.

(3) The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earnings.

The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Courts which will be instituted under the new Act, to ensure impartial and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up.

The new clauses relating to the manner of modification of standing orders are designed to secure a similar purpose.

(4) The maximum duration of conciliation proceedings has been very much curtailed and substitutes for a notice of change have been recognised to avoid delay in initiating the actual work of conciliation.

(5) Provision is made for setting up joint committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer and employee relations. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption has been recommended by the Royal Commission on Indian Labour.

(6) The clause relating to references of disputes to the Industrial Court, at the instance of Government is redrafted to give it a wider field for the exercise of discretion. Such a course has been rendered necessary by the frequent calls on Government, during recent years, from employers as well as employees, for compulsory adjudication of disputes.

(7) Apart from reducing the penalties for going on or continuing on an illegal strike the Bill removes an ambiguity regarding the circumstances in which the penalties in consequence of an illegal strike arise.

(8) Provision is also made to enable Government to set up a Court of Enquiry, when this procedure is considered appropriate in a particular situation or dispute in an industry.

(9) The maintenance by Government of a record of conditions, usages and conventions relating to labour in each undertaking will be compulsory. This information will prove helpful to the authorities under the Act in settling disputes and determining whether a certain change was illegal or not.

(10) The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently.

(11) Annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only.

There are in addition a number of minor changes in the wording of several clauses to surmount certain legal and administrative difficulties which have been encountered in the working of the Act of 1938.

(12) In view of the scope of the Bill which embraces a much wider field than the Bombay Industrial Disputes Act, 1938, it has been entitled the Bombay Industrial Relations Bill.

THE BOMBAY INDUSTRIAL RELATIONS ACT

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THE BOMBAY INDUSTRIAL RELATIONS ACT

An Act to regulate the relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes.

WHEREAS it is expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes : It is hereby enacted as follows :

Introductory :—(a) *History of 'Legislation':—* The Industrial "Strike" as a means to secure redress of grievances and alterations and changes in existing conditions of employment has been the most outstanding feature of the relations between employers and the employed in all countries in the world. To-day most countries have comprehensive schemes of legislations aiming at a peaceful settlement of all kinds of Trade disputes, and they vary widely in character, scope and extent, ranging from simple conciliation, either by private arrangement or through permanent conciliators appointed by the State, to the compulsory acceptance by both the parties of decisions or awards given by Industrial Arbitration Tribunals or by Industrial Courts.

The position of Industrial law in India prior to the Bombay Industrial Disputes Act was neither efficient nor satisfactory. The Indian Trade Disputes Act of 1929 provided for the first time for the appointment of Courts of Enquiry and Boards of Conciliation for peaceful settlement of industrial disputes by voluntary conciliation, but the machinery was so cumbrous that it has rarely been used during all the years it has been on the Statute Book. The Government of Bombay, in 1934, passed the Bombay Trade Disputes Conciliation Act, which applied to the Textile Industry in the Bombay City and provided for the appointment of a Labour Officer who was to secure redress of grievances of employees, and the Commissioner of Labour who as the Chief Conciliator was to bring the two parties together with a view to their reaching an amicable settlement of the trade dispute. But in the Act there was nothing obligatory on the parties to a trade dispute to resort to conciliation before resorting to a strike or lock-out. The Bombay Industrial Disputes Act, 1938 was, therefore, enacted by the Congress Ministry of Bombay to remove such drawbacks and short-

comings. It applied to Cotton, Silk and Woollen Textile Industries. That Act for the first time provided for compulsory conciliation for settlement of trade disputes, except where parties had agreed to refer the dispute to voluntary arbitration; and it further declared strikes or lock-outs during the pendency of these proceedings illegal, until the whole machinery provided for discussion and negotiation had been made use of. Conciliation would start to function immediately a trade dispute was likely to occur, because an obligation was imposed to give a notice of change in the prescribed manner to the prescribed authorities and thus to go through the conciliation stages first, leaving the option to parties thereafter, to settle the dispute by direct action or by arbitration.

These agencies of Standing Orders, Conciliation and Arbitration set up by the Act provided for the administration of the industry by a rule of mutual adjustment in preference to sporadic and disastrous strikes and lock-outs.

For representation of Labour, each occupation or industry in a local area was allowed to have not more than one registered union at one time. Such a registered union with not less than 25 per cent. membership of workers in any industry or occupation, whether recognised by the employer or not, was called a Representative Union. In its absence, any other union with at least 5 per cent. membership could be registered, provided it was recognised by the employer. The Representative Union could act as a representative of employees even if some of the employees directly affected by the change were its members, while the Recognised Union could so act and conduct all negotiations and enter into agreements on behalf of the employees only if majority of the employees directly affected by the change were its members. Besides the Registered Union, the Act provided for declaration of a Qualified Union with at least 5 per cent. membership, even though it was not recognised by the employer. Such a union could not take part in the negotiations but was entitled to assist the representatives of employees and appear in all proceedings under the Act where it had more than fifty per cent. of the employees concerned as its members. Failing a registered union, the workers concerned directly elected their representatives for each change, or in the last resort Labour Officer could conduct the preliminary negotiations on behalf of the workers with their employers. If agreements were reached they were registered, but if the parties failed to reach an agreement, a trade dispute was considered to have occurred and the Chief Conciliator would step in

and endeavour to bring about a peaceful settlement, except where parties had agreed to refer the dispute to arbitration. If the Conciliator failed or if Government otherwise ordered, a Board of Conciliation could be appointed. Thereafter, the parties were given the option to settle the dispute either by direct action or by arbitration.

An amendment was introduced in May 1941 by introducing section 49 A for compulsory arbitration of certain disputes at the instance of the Provincial Government. Similar drastic powers were assumed by the Central Government and were delegated to the Provincial Government when drastic measures were introduced in January 1942 under Rule 81 A of the Defence of India Rules, empowering Government to prohibit strikes and lock-outs and to refer disputes for compulsory conciliation or adjudication, and also to enforce the award of the adjudicator. These powers have been continued by the Emergency Provisions (Continuance) Order 1946, from 1st October 1946.

Another essential feature of that Act was the creation of a permanent tribunal of industrial arbitration, called the Industrial Court, which not only acted as a tribunal for arbitration but it also functioned as a court of final appeal. It had also to decide whether or not a strike or lock-out is illegal and all questions of interpretation of agreements and awards came before it.

The Bombay Industrial Disputes Act of 1938 had been extensively availed of by the employers as well as employees in the textile industry, to which alone it had been applied. It was found to have served the purpose to a very large degree for which it was enacted, and so from the experience of its working, the present Act has been enacted on the same foundations. Only the scope of the present Act has been made more extensive to embrace a much wider field, and, therefore, it has been entitled the Bombay Industrial Relations Act.* It is a very comprehensive legislation, making provision for settlement of disputes :

- (i) by mutual negotiations between representatives of employers and employees,
- (ii) with the help of the Conciliator if it is possible to do so,
- (iii) by an application to the Labour Court in certain matters, and

* Statement of Objects and Reasons

- (iv) by reference of the dispute to arbitration either by a voluntary submission or by a notification by the Government in certain circumstances.

These various measures have been provided to enable the worker to secure justice without having to resort to strike. A worker is, however, free to resort to strike as a last measure, if conciliation fails and arbitration is not available.

The new Act has as its aim, setting up an efficient machinery to define the relations between the employers and the employees regarding all routine matters by prescribing suitable standing orders, to provide ample safeguards against the abuse, misapplication or arbitrary use of these standing orders by granting the Labour Courts right to interpret standing orders and examine the propriety or legality of an order passed by an employer. The corner-stone of the Act, however, is the machinery prescribed to enable the employer or the employee to effect any alteration in the existing conditions, in all such industrial matters which are not standardised by standing orders or left over to the discretion of the Labour Court as in Schedule III. In all such matters, except those left to the discretion of the Labour Court, conciliation proceedings are compulsory. Since conciliation may not always bring about a settlement, the Act provides that parties can and may refer disputes to arbitration either of the Labour Court or the Industrial Court. If parties cannot or do not agree to submit the dispute to arbitration, they may resort to direct action; but in the interest of society Government has the power to order a reference to arbitration by the Industrial Court. The award of arbitrators is binding to both the parties. A strike or lock-out at any stage before the conciliation proceedings or the arbitration proceedings are over, or while the matter is before the Court, shall obviously be illegal. The additional agencies of the Joint Committee, the Labour Court and the Approved Unions, when combined with the existing agencies of Standing Orders, Conciliation and Arbitration whose scope has been well extended, will be able to provide a rule of mutual adjustment in preference to sporadic and disastrous strikes and lock-outs. This, in a nutshell, is what the Act provides. (Vide-Note by Sjt. Khandubhai K. Desai, M. L. A. on the Bombay Industrial Relations Act.)

(b) Changes introduced by the present Act:

(1) *Trade Unions* :—This Act creates a class of privileged unions called "Approved Unions" which alone will have substantial advantages under the Act, including the right of inspecting any

place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Courts and the Industrial Court. These privileges are conferred in consideration of certain obligations which they will have to undertake in the interests of the stability of industry and the progress of sound trade unionism. They will have to fulfil conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts, and the avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act.

This Act has further introduced a new category of Primary Union, which though it has a membership of only 15 per cent. of the employees in a single undertaking is given a representative place and function under the new scheme as it is an Approved Union. The Recognised Union and Occupational Union are also abolished, and the minimum membership of the Representative Union is brought down from 25 to 15 per cent. and the qualifying period is reduced from six months to three months in the case of a Representative Union. In the absence of a Representative Union, even a Qualified Union, and failing it, a Primary Union, is entitled to be registered for an industry in any local area. The range of activity of a registered union is enlarged by enabling a Representative Union to act as representative of employees for non-members, and other registered unions if they have been so authorised for that purpose in any proceeding.

(2) *Joint Committees* :—This familiar arrangement in the United Kingdom and several countries has been adopted in this Act on the recommendation of the Royal Commission on Indian Labour. Joint Committees for an undertaking or occupation will be set up with the consent of the employer and the registered union, provided there is a representative union or at least 15 per cent. of such employees are members of the registered union. This device would establish direct and continuous touch between the representatives of employer and employees, provided they are adequately organised, and would give a legitimate sense of dignity to labour due to such frequent contact and will ensure speedy consideration and disposal of difficulties which arise from day to day in employer and employee relations. As the decisions would bind the employer and the union, it will help to secure certain changes without going through the elaborate conciliation machinery.

(3) *Labour Tribunals* :—Labour Court is an innovation in this country. The conciliation procedure has not been found to be quite suitable for dealing with petty disputes involving no substantial issues, both because of the length of time involved in it and the lack of finality at the end of the proceedings. So delay in redress of these grievances created much bitterness and discontent which led to frequent strikes. A remedy is tried to be found in the Labour Court which will give impartial, final and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs, and the complaints that either side may bring up. It will decide disputes referred to it or disputes as to the legality or propriety of even discretionary orders passed by the employer, and questions of interpretation or application of Standing Orders, and will be able to order desired changes in matters in Schedule III, or withdraw any illegal change and will have concurrent jurisdiction of trial of offences. Its decisions are made appealable to the Industrial Court, which will also exercise superintendence over Labour Courts. So the Industrial Court will be relieved of petty work, and will be left free to function as an appellate authority, to interpret provisions of the Act, and to decide disputes or matters referred to it.

(4) *Compulsory Conciliation* :—This feature of the Bombay Industrial Disputes Act, 1938 has been retained and the maximum duration of conciliation proceedings has been reduced from four to three months, including extensions. Also substitutes for a notice of change have been recognised to avoid delay in initiating the actual work of conciliation. Modification of Standing Orders can be done by application to the Commissioner of Labour; also a large number of petty disputes involving no substantial issues have been left to the Labour Courts for expedient and final disposal; and the decisions of Joint Committees will also afford effective substitutes for notice of change.

(5) *Compulsory Arbitration* :—The clause relating to references of disputes to the Industrial Court at the instance of the Provincial Government has been redrafted to give it a wider field for the exercise of discretion. Sweeping powers have been given under sub-sections (ii) and (iii) of Section 73 so that any dispute can be referred to compulsory arbitration. Also another section 72 is inserted to provide for compulsory arbitration for disputes between employers and employees.

(6) *Illegal Strikes or Lock-outs* :—Apart from reducing the penalty for an illegal strike and increasing that for an illegal lock-

out, the Act has added an exemption clause to the effect that if a strike or lock-out is commenced after due notice, and where work is resumed or lock-out is discontinued within 48 hours of the decision of the Court of its illegality, no penalty will be incurred. Also it removes an ambiguity regarding the circumstances in which the penalties in consequence of an illegal strike or lock-out may arise by providing that persons who instigate or incite others to take part or act in furtherance of an illegal strike or lock-out, will not be punished if the court finds that a reasonable doubt existed at the time of the offence about the legality of the strike or lock-out.

(7) *Courts of Enquiry* :—Provision has also been made to set up a Court of Enquiry for the purpose of expert investigation where this procedure is considered appropriate in a particular situation or dispute in any industry. Such proceedings are judicial proceedings.

(8) *Records of Industrial Conditions* :—The Provincial Government has assumed power to maintain record of industrial matters mentioned in the schedules and for that purpose can require any employer to maintain and submit copies of a record in the prescribed form. For obtaining information for this purpose or verifying accuracy of such records it may hold an inquiry and shall have access to relevant records or documents and may enter at any reasonable time any premises where records are believed to be and may ask questions. These are all judicial proceedings. This information will prove helpful to the authorities under the Act in settling disputes and in determining whether a certain change was illegal or not.

(9) *Powers and duties of the Labour Officer* :—The powers and duties of the Labour Officer are further expanded so as to enable him to function more efficiently.

(10) *Annual election of representatives* :—Also annual election of representatives of employees is provided for in lieu of the old system of election of representatives for a particular dispute only.

There are in addition a number of minor changes in the wordings of several clauses; and the scope of the Act is much extended by an all-embracing definition of the word "industry."

The Preamble :—The preamble of an Act sets forth the reason for the particular enactment and foreshadows what is intended to be effected by the Act. The Bombay Industrial Disputes Act, 1938, was intended to provide for settlement of industrial disputes, but this Act is intended also to regulate the relations of employers

and employees, and thus in view of the wider field it embraces within its scope, it has been entitled the Bombay Industrial Relations Act.

Scope and Operation of the Act :—*The Act is not confined only to disputes arising from civil or contractual rights :—*It is because there may be demands arising out of the relationship of the employer and employees, which either party can make from the other, and which cannot be enforced in a court of law, but the settlement of which is desirable for the smooth working of the industry, that this Act is enacted to settle such disputes. Operation of the Act, therefore, is not confined to disputes which have their origin in a civil or contractual right. Such a contention if allowed would frustrate the very object of the Act and make it infructuous for all practical purposes. If the rights which the parties could bring before the Industrial Court were rights founded upon contract or any other law for the time being in force, then the parties could have been left to their remedies in Civil Courts, and there was no necessity for devising elaborate machinery of the Act and for establishing the Industrial Court or Labour Courts. The Act contemplates a distinction between a dispute with respect to an industrial matter and civil rights as such, and it is in order to give opportunities to settle their disputes amicably before resorting to a strike or a lock-out that the Act is enacted (Sub. No. 1 of 1945-F. B.)

Rules of Interpretation :—*Object of the rules of interpretation :—*All rules of interpretation are intended to guide courts in arriving at an interpretation which furthers the ends of justice rather than defeats them. If by a beneficial construction of the words or by placing a liberal interpretation on them the decision reached is a just one, there is no reason why any technical rules of interpretation should interfere with that decision. (A. I. R. 1947 Lah. 1-F. B.) Bearing this in mind we may now proceed to consider some of the fundamental rules relating to the interpretation or construction of statutes.

1. *Language of the Statute :—*The fundamental rule of interpretation of a statute is that it is to be expounded "according to the intent of them that made it." So if the words of a statute themselves are precise and unambiguous, no more is necessary than to expound the words in their natural and ordinary sense and no question of interpretation arises. (I. L. R. 24 pat. 690; A. I. R. 1945 Oudh 242-F. B.) Legislature means what it says and so when the meaning of the words is plain, speculation as to intention

of Legislature is not permissible (A. I. R. 1946 Lah. 54; A. I. R. 1947 All. 34; 48 Bom. L. R. 83). So far as the intention of the Legislature is concerned it is dangerous even if it be permissible to arrive at it by any process of logical reasoning (A. I. R. 1945 Lah. 127). The courts have no right to busy themselves with questions of policy, or to determine whether a law is good or bad or desirable or undesirable, or to consider the possible effects of their decisions. If the words are plain, they must give effect to them whatever the consequences. They are not permitted to add words nor are they allowed to subtract words from the statute (A. I. R. 1946 Nag. 42; A. I. R. 1946 Nag. 200). The duty of the court is not to make law but to administer law as it finds (A. I. R. 1946 Bom. 459; App. nos. 163 and 164 of 1943). The words of the enactment must have their natural effect given to them, as far as possible, for the construction of an Act primarily depends on its wording. So the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any extraneous considerations derived from the previous state of law, hardship, policy or intention of law or analogy of other enactment (1891) 2 A. C. 107, 144, 145 Bank of England v. Vagliano; 47 Bom. L. R. 260=A. I. R. 1945 P. C. 48; A. I. R. 1946 Cal. 272).

2. *Reasonable Construction* :—Although the language of the statute is the first test for its interpretation, when the language is not clear and unambiguous and more than one construction or interpretation, is possible, the construction or interpretation which appears to be most in accord with reason, convenience, justice and legal principles is to be preferred (A. I. R. 1945 Lah. 154). Where the language is not clear a reasonable construction should be adopted which will not lead to any absurd and ridiculous result or injustice or defeat the object of the Act itself (A. I. R. 1921 P. C. 240; A. I. R. 1945 Lah. 76-F. B; App. No. 8 of 1940-F. B.). Law cannot be interpreted so as to divorce it from commonsense (A. I. R. 1946 All. 351).

3. *Harmonious Construction* :—All parts of a statute should be so construed as to result in a harmonious working, and not as to run counter to each other and frustrate the very object of the enactment (A. I. R. 1946 Pat. 47). Law must be interpreted in a way which will not render one of its provisions entirely nugatory (A. I. R. 1946 Cal. 245); or make words unnecessary in the statute (A. I. R. 1946 Nag. 152). A court interpreting a particular section of the Act must take the whole of the Act into consideration, and if any construction of the section does not fit in with the rest of

the Act, it must reject it and look for some other construction which would apply to all parts of the Act equally well. But in doing so the Court is not free to alter the meaning of what is clear and explicit (A. I. R. 1936 Cal. 593—A. I. R. 1946 Cal. 348; F. B.).

Construction of the Words:—The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or some redundancy or inconsistency with the rest of the enactment in which case the grammatical and ordinary sense of the words may be modified so as to avoid absurdity, repugnance, redundancy or inconsistency, and no further (1857) 6 H. L. C. 61 (106)=26 L. J. Ch. 473 *Grey v. Pearson*; A. I. R. 1946 Pat. 110—F. B.; 45 Bom. L. R. 264).

4. **Pre-existing law or analogous enactment:**—Recourse to pre-existing law should only be had when the language of the Act is not clear or when the Act does not contain any provision regarding a particular case (1891) 2 A. C. 107, 144, 145 *Bank of England v. Vagliano*). Argument from analogy is always dangerous and it is worse than useless to construe the meaning of one section in one Act from the true meaning and effect of another section in another Act (A. I. R. 1945 Pat. 414; 40 Bom. L. R. 799). But the rule as to the exposition of one Act of Legislature by the language of another Act, may properly be applied to different statutes *in pari materia* though made at different times. Where, therefore, the Act deals with similar subject although not for the identical purpose, it is not improper to refer to the differences observed by the Legislature in the use of similar expressions (41 Bom. L. R. 371). Where the provisions in two statutes are analogous, rulings given in respect of one are relevant in construing the provisions of the other (A. I. R. 1945 Oudh 59).

5. **Proceedings of Legislature :**—The Court is not concerned with the debates in the Legislature during the passage of the bill through the Assembly or Council. It is only concerned with the intention of the Legislature as expressed in the bill as finally passed into law, and will construe the words used in their ordinary grammatical meaning (A. I. R. 1942 Sind 65). The Court cannot consider the Parliamentary history of an enactment for the purpose of ascertaining its meaning (A. I. R. 1942 Oudh 231). No reference may be made to the introductory notes to a code or to any statement made on the introduction of the measure or during its discussion as affording any guidance to the meaning of the words, unless

the statute itself is ambiguous and cannot be construed without the aid of such reference to outside sources (A. I. R. 1935 Cal. 334; A. I. R. 1940 P. C. 56; A. I. R. 1930 All. 225; I. L. R. 8 Bom. 241). Statement of Objects and Reasons cannot be referred for interpretation of the statute, when the words are clear (A. I. R. 1946 Bom. 159).

6. *Preamble, headings, marginal notes and proviso:*

Preamble:—The preamble of a statute is said to be a good means of finding out its meaning, and as it were, a key to the understanding of it; and as it usually states or professes to state the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt. But the preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt (Maxwell on Interpretation of Statutes; A. I. R. 1943 Bom. 226; A. I. R. 1945 Mad. 47).

Headings: Headings prefixed to the sections or sets of sections in a statute are regarded as preamble to those sections, and, therefore, afford a safe guide in interpretation of those sections; but they cannot either restrict or extend the scope of the sections when the language used is free from ambiguity (I. L. R. 1939 All. 275),

Marginal Notes: Marginal notes are also not part of the statute, and they also, therefore, cannot control the clear meaning of the section itself (Appeal No. 1 of 1945-F. B.) and cannot be referred to for the purpose of construing the Act (I. L. R. 26 All. 393 = 31 I. A. 132-P. C.; A. I. R. 1946 Bom. 510).

Proviso:—The proper function of a proviso is to except and deal with a particular case which would otherwise fall within the general language of the enacting clause, and its effect is confined to that particular case and is not to enlarge the words of the enacting clause. Where the language of the enacting clause is clear and unambiguous, a proviso can have no repercussion on the interpretation of the enacting clause so as to exclude by implication what clearly falls within its express terms (A. I. R. 1947 Lab. I-F. B.; 47 Bom. L. R. 587-P. C.).

CHAPTER I

Preliminary

1. This Act may be called the **Bombay Industrial Relations Act, 1946.**
Short title.

2. (1) This Act extends to the whole of the Province of Bombay.
Extent, commencement and application.

(2) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* specify.

(3) In the area in which the Bombay Industrial Disputes Act, 1938, was in force immediately before the commencement of this Act, this Act shall apply to the industries to which the said Act applied.
Bom. XXV of 1938.

(4) The Provincial Government may by notification in the *Official Gazette* apply all or any of the provisions of this Act to all or any other industries, whether generally or in any local area, as may be specified in such notification.

Extent, commencement and application:—This Act has come into force throughout the Province of Bombay as per notification published in the Government Gazette. (See Appendix III.) It has been applied under sub-section (3) of section 2 to all the industries in all the areas in which the Bombay Industrial Disputes Act, 1938, was in force under the various notifications issued from time to time by the Government of Bombay. (See Appendix III.) So it has been applied to the Cotton Textile Industry throughout the Province of Bombay the Silk Textile Industry in the city of Bombay, and the Woollen Textile Industry in the city of Bombay and in the Thana Municipal Borough. It has been further applied under sub-section (4) of section (2) to other industries in other areas by various new notifications issued by the Government of Bombay under this Act. (See Appendix III.)

3. In this Act unless there is anything repugnant
Definitions. in the subject or context—

(1) " approved list " means the list of approved unions maintained by the Registrar under section 12;

(2) "approved union" means a union on the approved list ;

(3) "arbitration proceeding" means—

- (i) any proceeding under this Act before an arbitrator,
- (ii) any proceeding before a Labour Court or the Industrial Court in arbitration ;

(4) "arbitrator" means an arbitrator to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire ;

(5) "association of employers" means any combination of employers recognised by the Provincial Government under section 27 ;

(6) "award" means any interim or final determination in an arbitration proceeding of any industrial dispute or of any question relating thereto ;

(7) "Board" means a Board of Conciliation appointed under section 7 ;

(8) "change" means an alteration in an industrial matter ;

(9) "Commissioner of Labour" means an officer appointed by the Provincial Government for the time being to be the Commissioner of Labour ; and in respect of any of the powers and duties of the Commissioner of Labour that may be conferred and imposed on any person, includes such person ;

(10) "conciliation proceeding" means any proceeding held by a Conciliator or a Board under this Act ;

(11) "Conciliator" means any Conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator ;

(12)* "Court of Enquiry" means a Court constituted under section 100 ;

(13) "employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes—

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b) a person who has been dismissed or discharged from employment on account of any dispute relating to a change in respect of which a notice is given or an application made under section 42 whether before or after his dismissal or discharge;

(14) "employer" includes—

- (a) an association or a group of employers;
- (b) any agent of an employer;
- (c) where an industry is conducted or carried on by a department of the Provincial Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of the department;
- (d) where an industry is conducted or carried on by or on behalf of a local authority, the chief executive officer of the authority;
- (e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking;

(15) "illegal change" means an illegal change within the meaning of sub-section (4) or (5) of section 46;

(16) "Industrial Court" means the Court of Industrial Arbitration constituted under section 10;

(17) "industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;

(18) " industrial matter " means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes—

- (a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person ;
- (b) all matters pertaining to the demarcation of functions of any employees or classes of employees ;
- (c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement, or a submission, settlement or award made under this Act ;
- (d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole ;

(19) " industry " means—

- (a) any business, trade, manufacture or undertaking or calling of employers ;
- (b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees ; and includes—
 - (i) agriculture and agricultural operations ;
 - (ii) any branch of an industry or group of industries which the Provincial Government may by notification in the *Official Gazette* declare to be an industry for the purposes of this Act ;

(20) " Joint Committee " means a Joint Committee constituted under section 48 ;

(21) " Labour Court " means a Labour Court constituted under section 9 ;

(22) " Labour Officer " means an officer appointed to perform the duties of a Labour Officer under this Act ; and includes in respect of such powers and duties of the Labour Officer as may be conferred and imposed on him, an Assistant Labour Officer ;

(23) " local area " means any area notified as a local area for the purposes of this Act ;

(24) " lock-out " means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of--

(a) compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him,
to accept any term or condition of or affecting employment ;

(25) " member " means a person who is an ordinary member of a union and who has paid a subscription of not less than two annas per month ;

Provided that no person shall at any time be deemed to be a member if his subscription is in arrears for a period of three months or more next preceding such time ;

(26) " occupation " means such section of an undertaking as is recognised under section 11 to be an occupation ;

(27) " prescribed " means prescribed by rules made under this Act ;

(28) " Primary Union " means a union for the time being registered as a Primary Union under this Act ;

(29) " Qualified Union " means a union for the time being registered as a Qualified Union under this Act ;

(30) "registered union" means a union registered under this Act ;

(31) "Registrar" means a person for the time being appointed to be the Registrar of Unions under this Act ; and includes in respect of such powers and duties of the Registrar as may be conferred and imposed on him, an Assistant Registrar of Unions ;

(32) "representative of employees" means a representative of employees entitled to act as such under section 30 ;

(33) "Representative Union" means a union for the time being registered as a Representative Union under this Act ;

(34) "schedule" means a schedule appended to this Act ;

(35) "settlement" means a settlement arrived at during the course of a conciliation proceeding ;

(36) "strike" means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute ;

(37) "undertaking" means such concern in any industry as is recognised by the Registrar under section 11 ;

(38) "union" means a Trade Union of employees ^{XVI of 1926.} which is registered under the Indian Trade Unions Act, 1926 ;

(39) "wages" means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes—

(i) any bonus, allowances (including dearness allowance), reward or additional remuneration ;

(ii) the value of any house, accommodation, light, water, medical attendance or other amenity or service ;

- (iii) any contribution by the employer to any pension or provident fund ;
- (iv) any travelling allowance or the value of any travelling concession ;
- (v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment ;
- (vi) any gratuity payable on discharge.

Section 3 : Definitions :—This section contains definitions. The object of this section is to declare that certain words used in this Act shall have a particular meaning given to them by the Legislature (A. I. R. 1926 Sind 58).

Interpretation of definitions :—When a definition is intended to be exhaustive, the form of the words used is " means and includes ". But where the definition is not intended to be exhaustive of the things denoted by it but is merely enumerative the word " includes " is used. Such a definition would include other things *ejusdem generis* with the things denoted by it (I. L. R. 2 Mad. 5). It is well known that the Legislature uses the word " means " when it wants to exhaust the significance of the term defined, and the word " includes " where it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise, so as to make the definition enumerative but not exhaustive (A. I. R. 1946 Cal. 217).

Sub-sections (1) and (2) : Approved list and Approved Union :—These provisions are newly enacted in the present Act in the interests of stability of industry and the orderly progress of sound trade unionism. (See Sections 12 and 23.)

Sub-section (5) : Association of employers :—(See section 27 and rules in Appendix I.)

Sub-section (8) : Change : Cf. Old law :—This definition reproduces the definition in section 3 sub-section (6) of the Bombay Industrial Disputes Act, 1938, with the word " alteration " substituted for the word " change ". This sub-stitution seems to have been made by way of a happy expression of this definition, without effecting any alteration in the accepted interpretation of this word.

Nature of Change under section 42 :—It is not every change that requires a notice of change but the change must be one which would, if not agreed to, lead to an industrial dispute. The view necessarily postulates that the change contemplated must be one which the employers could compel the employees to accept or which would affect adversely the condition of workers (App. No. 4 of 1940-F. B; App. No. 87 of 1944-F. B.). If there be any departure from normality in respect of the terms and conditions of employment then it would be a change technically so called ; but acting in consonance with usage will not be a change (App. No. 50 of 1941-F. B.).

Grant of an increase in wages :—The grant of an increase in wages is not a change of this nature because even if this change was not agreeable to the employees it was not incumbent on them to accept the increased wages (App. No. 4 of 1940-F. B., App. No. 158 of 1943).

Grant of bonus with conditions :—Bonus being an *ex-gratia* payment, grant thereof to the entire class of workers without any discrimination subject to any condition whatsoever, e. g. to be paid only to the persons continuing on the muster roll till the day of payment, cannot be a circumstance affecting adversely the condition of employees as it obtained before the grant (App. No. 87 of 1944-F. B.). In that case the change was held to be not likely to lead to an industrial dispute, and hence whether bonus is included in the term wages or not was not decided. So even though under the present Act bonus forms part of wages, the decision will hold good.

Non-payment :—If short payment of dearness allowance would constitute a change, it must necessarily follow that non-payment would also constitute a change. It would be ridiculous to contend that if five rupees were awarded as the dearness allowance and if only one anna was paid, the action would constitute a change in the terms of an award, but that if nothing was paid there would be no change as such (App. No. 12 of 1941).

Sub-section (13): Employee: Cf. Old Law :—This definition, with the exception of clause (a), relating to contract labour, which is new, practically reproduces the definition in section 3 sub-section (10) of the Bombay Industrial Disputes Act, 1938, with the expression "and includes an employee dismissed or discharged from employment on account of any dispute relating to a change in respect of which a notice is given or an application is made under section 42 whether before or after his dismissal or

discharge" substituted for the expression "and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 28 whether before or after the discharge;" so as to embrace a dismissed employee as well within its scope.

Analysis :—This is an exhaustive definition. It means any person employed in any industry to do any work for hire or reward. The work may be skilled or unskilled, manual or clerical. So the highest paid engineer or a technician, or a clerk or even an ordinary operative or a workman would all come within this definition. It is also not restricted to persons employed in the industry at any particular time, but includes any person who is engaged in the industry for hire or reward at any time (App. Nos. 33 of 1941 and 42 of 1941—F. B.).

The definition also includes :—

(1) **Contract Labour**: any person employed by a contractor in the execution of the whole or any part of any work, *which is ordinarily part of the undertaking*. It seems that contract labour employed in the execution of any work which is extraordinary, and is not ordinarily part of the undertaking, cannot come within this definition.

(2) **Dismissed or discharged employee**: any person who has been dismissed or discharged on account of any dispute relating to a desired change in respect of which a notice is given or an application to the Labour Court is made under section 42. Any person who has been dismissed or discharged for any other reason will be excluded from the term "employee" (App. No. 16 of 1941; App. No. 28 of 1941;—followed in App. Ne. 87 of 1944 —F. B; App. Nos. 158 of 1943 and 23 of 1944, and 112 of 1945).

Position under the old law : (a) **Contract Labour**:—There was no provision under section 3 sub-section (10) of the Bombay Industrial Disputes Act, 1938, to include contract labour within the term "employee" though by reason of the definition of "employer" in section 3 sub-section (11) clause (e), the mills technically came within the category of employer in respect of persons engaged on contract labour; and for which reason Standing Orders had to be framed for these persons. It was held that even though for the purposes of maintaining discipline and having uniformity in the industry it may have been necessary to frame Standing Orders with regard to persons employed by the

contractors, but that does not make the Mills responsible for the ordinary remuneration paid to these people. If the Mills are not responsible for their normal wages, the responsibility for paying dearness allowance could not be fastened on them (App. No' 19 of 1940-F. B.).

Tests applied in the determination whether a person is an employee of a contractor or of the undertaking :—(i) Responsibility for payment of remuneration; (ii) Whether the contractor is a mere mechanical medium to transmit the amount of wages from the undertaking to the workers or whether he charges a certain amount of remuneration for his services ; (iii) Whether the contractor or the owner of the undertaking selects the employees, dismisses them and lays down conditions of pay etc.

Cases in which employees held to be of the Mill Company :— It is not necessary that the names of the persons must be in the registers of the Mill Company, nor that they should be given cards or tickets by the Mills, nor that their wages should be paid in the usual way in which the other employees were paid. It is the responsibility of payment which decides whether the person concerned is the employee of the Mill Company or not (App. Nos. 230 of 1943 and 110 of 1944). If the contractor was merely a supplier of labour and only an intermediary to pass on payments from the Mill to the employees without deducting his remuneration or making a bill for his contract, and also if the employees were discharged only for asking dearness allowance, it is clear beyond all doubt that the employees were of the Mill Company and not of the contractor (App. No. 230 of 1943). Where the manager ordered a Mill officer to engage the man, and fixed his pay, and there was no mention of contractor's name anywhere in the appointment order, and where the manager had actually signed even the discharge slip, it could not be said that the department was run by the contractor. If the contractor was really a contractor, he would not be paid wages, and much less dearness allowance, his being a mere venture in which he gets only the difference between what is paid by the Mill Company and what he himself pays to his own employees (App. Nos. 35 and 95 of 1944 and 46 of 1945).

*Cases in which employees held not to be of the Mill Company :—*If the contractor selected his own employees, laid down their conditions of work, and could also dismiss them; and if he did not merely transmit the wages from the Mill to the

employees but retained his remuneration, then merely because the license of the Grain shop was issued in the name of the Mills to avoid delay, difficulty and inconvenience to the workers which would result each time the contractor left, and because stocks were purchased by the Mills the employees do not become the employees of the Mills (App. No. 110 of 1944). The very fact that the operative takes no action whatever, either by complaining to the Mill authorities or to the Labour Officer or to the Industrial Court for a long stretch of seventeen months during which he was neither paid dearness allowance nor bonus, when coupled with his own admission that whereas the other employees were paid their salaries by the time-keeper, he was paid by the contractor, shows that he was not the employee of the Mill Company at all, and further that he himself knew that he was not the employee of the Mill (App. Nos. 44 and 45 of 1945). These cases have lost much of their importance under the present Act, but according to the position analysed hereinabove, if the contract is for the execution of the whole or part of any work, *which is not ordinarily part of the undertaking*, these tests will have to be applied to determine whether the employees are of the contractor or of the undertaking.

(b) *Discharged or dismissed employee* :—Under section 3 sub-section (10) of the Bombay Industrial Disputes Act, 1938, only a "discharged" employee in connection with a notice of change was included in the definition. The scope of the present definition embraces even a "dismissed" employee as well; and so an employee who is discharged or dismissed from employment on account of an industrial dispute retains the rights of an "employee" under the Act even after his discharge or dismissal.

Distinction between employee, operative and workman :—Employee is defined here only for the purposes of this Act. Operative is defined in the Standing Orders so as to include in its fold Overseers, Jobbers, Muccadams, Watch and Ward Staff, Motor Vehicles Staff and Cartmen. That definition thus excludes employees like clerks or persons like Assistant Weaving Master (App. No. 199 of 1943). Workman has been defined in Workmen's Compensation Act, 1923, Factories Act 1934, etc. Under section 2 (k) of the Trade Disputes Act, 1929, a clerk is included in the definition of a workman. (Vide:— the award of Diwan Bahadur D. G. Kamerkar re: the dispute between Copper Engineering Ltd., Satara Road and its employees, 1946 B. G. G. Part I at P. 3661.) It would be dangerous to seek to construe one statute

by reference to words of another statute (40 Bom. L. R. 799). But the rule as to the exposition of one Act of Legislature by the language of another Act, may properly be applied to different statutes *in pari materia* though made at different times. Where, therefore, the Act deals with similar subject, although not for an identical purpose, it is not improper to refer to the differences observed by the Legislature in the use of similar expressions (41 Bom. L. R. 371).

Sub-section (14): Employer :—*Cf. Old law :—*This definition reproduces the one in section 3 sub-section (11) of the Bombay Industrial Disputes Act, 1938. It covers contractors, local authorities and groups of employers.

Clause (c) :—Central Government Employer :—From the language of the clause it is clear that the Legislature had no intention to include any industry conducted or carried on by the Central Government within the scope of the present Act. Any industry not conducted or carried on by the Provincial Government is excluded by necessary implication. If the Crown is to be bound by any Act, there must be a specific provision in the Act, similar to the one in the Factories Act, 1934, or an inference to that effect must arise by necessary implication. So it was held that the Act did not apply where the Central Government was the *de facto* owner of a mill, where a contractor working under the directions of the Central Government reduced the number of employees after giving a notice of change but before completion of conciliation proceedings, because the mill was not the employer under section 3 sub-section (11) of the Bombay Industrial Disputes Act, 1938 (App. No. 65 of 1943-F. B.). (See Rules in Appendix I, as to the authority prescribed as the employer in such case.)

Sub-section (15): Illegal Change :—This definition is newly enacted in this Act. (See section 46.)

Sub-section 16: Industrial Court :—(See section 10.)

Sub-section (17): Industrial Dispute: *Cf. Old law :—*This definition is merely reproduced from the one in section 3 sub-section (13) of the Bombay Industrial Disputes Act, 1938.

Analysis :—The essential ingredient of an industrial dispute is that it must be connected with an industrial matter, defined in sub-section (18). Such dispute may arise between the employer and employee or between employers and employees or even between employees and employees.

Industrial disputes and civil rights:—The Act contemplates a distinction between a dispute with respect to an industrial matter and civil rights as such. The former includes even matters not included in the latter, *e. g.* a demand for payment of bonus or an *ex-gratia* payment, which arises out of the relationship of the employer and employees, but which cannot be enforced in a court of law. If the rights which the parties could bring before the Industrial Court were rights founded upon contract or any other law for the time being in force, then the parties could have been left to their remedies in civil courts. It is in order to give opportunities to the parties to settle their industrial disputes amicably before resorting to a strike or a lock-out that the Bombay Industrial Disputes Act, 1938, was enacted (Sub. No. of 1945-F.B.).

Demand for a holiday:—The demand for a holiday is a demand with reference to an industrial matter, and an industrial dispute may arise when a Labour Union makes the demand and the Mills express their inability to grant it (App. No. 2 of 1941—followed in App. No. 4 of 1944-F.B.).

Sub-section (18): Industrial Matter:—*Cf. Old law:*—This definition is reproduced from the one in section 3 sub-section (14) of the Bombay Industrial Disputes Act, 1938, with the words "any matter relating to *employment*, work, wages, or the mode, terms and conditions of employment" substituted for the words "any matter relating to work, *pay*, wages, *reward*,.....or the mode, terms and conditions of employment or *non-employment*." The practical effect of this modified definition is the same, for though the words "pay, reward" and "or non-employment" are deleted, general words like "relating to employment, wages etc." are substituted which cover the words deleted.

Analysis:—This is an exhaustive definition of industrial matter. It means any matter, that relates to,

- (i) employment,
- (ii) work,
- (iii) wages,
- (iv) hours of work,
- (v) privileges,
- (vi) rights or duties of employers or employees,
- (vii) the mode, terms and conditions of employment.

It includes all matters, pertaining to

(a) relationship between employers and employees, or to dismissal or non-employment of any person;

(b) demand ~~of~~ of functions or classes of employees;

(c) right or ~~claim~~ under or in respect of or concerning a registered agreement, settlement or award made under this Act; and also includes,

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole.

Industrial matter, therefore, includes any matter relating to work of the employees and it generally includes all matters pertaining to the relationship between employers and employees (App. No. 14 of 1940).

(i) **Employment :—***Appointment, suspension, discharge and dismissal of officers and operatives :—*Protest against the appointment of a new weaving master in the place of the old (App. No. 14 of 1940); or dissatisfaction against the suspension of a jobber (App. No. 90 of 1942); or dismissal of two workers (App. No. 42 of 1946); or the demand that a particular worker who has been illegally dismissed may be reinstated (App. No. 44 of 1940); or a strike, the avowed ground for which is the alleged improper discharge of some weavers (App. No. 48 of 1941), relates to an industrial matter.

(ii) **Work : Giving work to badlies :—**The demand of the badlies that all of them should be given work relates to an industrial matter (App. Nos. 10 and 11 of 1940).

(iii) **Wages : Payment, increase or alteration of its basis etc. :—**The demand for payment of the unclaimed wages on a day other than one fixed under the Standing Orders (App. No. 5 of 1940-F. B.); or grievance about low wages (App. No. 57 of 1941); or a demand of increase in wages (App. No. 4 of 1944-F. B.); or a demand of the weavers for payment on scale weight and not on nominal or standard weight (App. Nos. 10 and 11 of 1940), relates to an industrial matter.

Payment of Dearness Allowance :—The dearness allowance is being demanded by the worker in connection with the work that he is doing, although the basis of the demand is a rise in the cost of living. It is also a matter directly related to wages, for, in

demanding dearness allowance the worker in effect says that he must be restored the fall in the "real wages" due to rise in prices by paying him something more by way of additional wages or dearness allowance. And so long as the matter has any reference to work, pay or wages, it must be deemed to be an industrial matter (Sub. No. 1 of 1945-F. B.—wherein App. Nos. 33 of 1941-F. B. and App. No. 10 of 1941 were followed).

Payment of bonus :—Bonus is a gratuitous payment, but it is not a pure gift which may have no relation to work done or to be done by the donee, as it is asked as an extra payment for work already done. So the mere fact that the workers have no legal right under the Act to a bonus does not affect their right under the Act to demand the payment of bonus as a reward, and such demand is an industrial matter. (Ref. No. 1 of 1945-F. B.)

(iv) **Hours of work :—**A protest against change in working hours (App. No. 59 of 1941); or a demand for having more "cleaning time" (App. No. 25 of 1941), relates to an industrial matter.

Holiday :—The demand for a holiday is a demand with reference to an industrial matter (App. No. 2 of 1941—followed in App. No. 4 of 1944-F. B.).

Refusal to disclose information as to intended cessation of work :—Where the reason for stoppage of work is the refusal of management to give information as to persons who informed them about the intention of employees to go on strike, the strike relates to an industrial matter, as it relates to alleged intended cessation of work by the employees (App. No. 42 of 1946.).

(v) **Privileges :—**The word "privilege" in the definition is used in addition to the words "rights or duties of employers or employees". It should, therefore, mean something which cannot be demanded as of right and it is not, therefore, a duty on the part of the other party but a concession which is made without any legal obligation (App. No. 7 of 1943).

Distribution of foodstuffs :—The distribution of foodstuffs at cheap rates from the mill is a privilege enjoyed by the operatives of the particular mill which opens the grain-shop, and therefore, comes within the definition of an industrial matter. It is also a matter pertaining to the relationship between the employer and the employees within the meaning of this section, because it is as the

employees of the mill that they would be entitled to the privilege of getting cheap foodstuffs from the grain-shop started by the mill (App. No. 7 of 1943).

Repair of a defective loom :—Though it is customary for the management to repair a loom if it is out of order, it cannot be called a customary concession or privilege. If the loom goes out of order, it is the business of the jobber on duty there to see that it is repaired and there is no question of withdrawal of any customary concession or privilege. It is not an industrial matter even though due to the neglect of the management in repairing the loom the daily earnings of the worker are reduced (App. No. 54 of 1940).

Rectification of meters :—So also the rectification of a meter is a routine act of the management of the mill, and is not an industrial matter, even though the earnings of the workers are reduced thereby (App. No. 24 of 1941).

Sub-section (19) : Industry : Cf. Old law :—The definition of industry under section 3 sub-section (16) of the Bombay Industrial Disputes Act, 1938, was merely enumerative. The present definition of industry not only reproduces the previous definition but is made exhaustive, and " agriculture and agricultural operations " are also brought within its ambit. The Bombay Industrial Disputes Act, 1938, was applied only to the cotton textile industry in the Province, the silk textile industry in the City of Bombay, and the woollen textile industry in the City of Bombay and the Thana Municipal Borough. The new Act may be applied to any other industry which would be covered by this wide, exhaustive definition.

Analysis :—Industry has been defined as

(a) any business, trade, manufacture or under-taking or calling of employers;

(b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees;

and includes (i) agriculture and agricultural operations and (ii) any branch of an industry or group of industries, which has been declared to be an industry by the Provincial Government, by a notification in the *Official Gazette* for the purposes of this Act.

Sub-section (20) : Joint Committee :—Introduction of Joint Committees of representatives of employers and employees in various occupations and industries in an industry is an innovation

of the present Act. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption was recommended by the Royal Commission on Labour. (See section 48.)

Sub-section (21) : Labour Court :—The Labour Court is also an innovation which has been introduced for the first time in our country by the present Act. (See section 9.)

Sub-section (23) : Local Area :—Local areas have been notified by the Provincial Government by notification in the *Official Gazette*. (See Appendix III.)

Sub-section (24) : Lock-out :—*Cf. Old Law :—*The definition of a lock-out in section 3 sub-section (19) of the Bombay Industrial Disputes Act, 1938, has been reproduced in the present definition, with the words "compelling any of the employees directly affected by such closing, suspension or refusal or any other employee of his" substituted for the words "compelling those persons." The effect of the amendment is to cover a case where the employer locks out his employees in order to compel his other employees who are not affected by this lock-out to accept some condition.

Analysis :—A lock-out means closing the place of employment or a part thereof; or suspension of work, wholly or partially; or the total or partial refusal to continue to employ his employees where such closing, suspension or refusal is

- (i) in consequence of an industrial dispute, and
- (ii) intended for the purpose of compelling the employees directly affected thereby or other employees of his or any other employer, to accept any term or condition of or affecting employment.

Essentials of a lock-out :—There are three essential requirements, which must be fulfilled in cases of a lock-out, *viz.* :—
 (1) There must be a closure, suspension of work or a refusal to employ; (2) it must be in consequence of an industrial dispute; and (3) it must be intended to compel acceptance of a term or condition of or affecting employment by those very persons or other employees of his or any other employer.

(1) Closure, suspension or refusal :—*When lock-out occurs :—*A lock-out does not take place on the day on which the notice of the intention to declare a lock-out on a future date is given. It begins on the day when there is either the closing of

the place or suspension of work or refusal to employ. If on that day the employees themselves came for work and none of them was prevented from working, there could not be any lock-out (App. No. 131 of 1945).

(2) In consequence of an industrial dispute :—

There must be some industrial matter over which an industrial dispute must have arisen, and in consequence of such dispute only the closure, suspension or refusal etc. would amount to a lock-out. So if the closure etc. is for some reason, not connected with an industrial dispute, *e. g.* in memory of the Founder or in celebration of some rejoicing event by the employer or because of the sweet will of the employer, it cannot be said to be in consequence of an industrial dispute, and would not, therefore, constitute a lock-out. No doubt, that in such cases, even though there is no lock-out, there is a change committed in an industrial matter, for it cannot be urged that the employer has a right to close down the concern for any reason other than an industrial matter, and the matter would be governed by Standing Order No. 16 or 18 or the new Standing Order that will be settled under this Act relating to closure, for which item No. 4 is newly added in Schedule I, to determine whether the closure was for a reason beyond the control of management and justified or not (App. No. 4 of 1945). The employer, would, therefore, be liable for an illegal change, though not for an illegal lock-out.

(3) Compelling acceptance of a condition :—It is not only sufficient that the closure etc. must be in consequence of an industrial dispute but that it must be intended for the purpose of compelling the very persons or other employees of his or any other employer to accept a term or condition of or affecting employment. So if the mill authorities dismiss the workers in consequence of the strike, and they refuse to take them even if they accepted the new conditions of employment, the refusal to take them not being for the purpose of compelling them to accept any term or condition of employment would not amount to a lock-out (App. No. 8 of 1941). Also where the mill refused to employ certain operatives of the spinning department who had gone on illegal strike as a protest against increase in hours of work, it was held that unless the exclusion of those workers was intended for the purpose of compelling them to accept any condition of employment, the action of the mill authorities would not amount to a lock-out (App. No. 4 of 1941). So also if the management wanted to punish the

leaders rather than to compel the workers to accept the condition, by locking them out on the ground that they had not expressly given up their demand, though they were not asked to give such assurance and though the whole body of workers was taken up without any such assurance, the lock-out could not come within the definition of a lock-out. In this case it was also held that as the alleged lock-out would not come within the definition, it must be regarded as illegal and declared as such. This decision creates anomaly; for if the alleged lock-out would not come within the definition of a lock-out, how could it be declared to be an illegal lock-out? What is probably intended by the decision to be laid down is that the closure though it did not amount to a lock-out was not justified, and it must be declared as an illegal change, a prayer to which effect was also sought in the application (App. No. 110 of 1945; cf. App. No. 4 of 1945-*supra*).

Threat of lock-out with an option to resume:—If the employers were justified in declaring a lock-out they would be also justified in saying that the workers should return to work within a certain time, otherwise they would be locked out. This does not constitute either a threat or a new rule of discipline under Schedule II item 8, but is only an option given to the workers. Also lock-out does not take place when the notice of intention to declare it on some future date is given (App. No. 131 of 1945).

Very persons or other employees:—Under the Bombay Industrial Disputes Act, 1938, it was held that the closing of the place or the refusal by the employer to continue to employ persons must be with the intention of compelling those *very* persons to accept any term or condition of employment (App. No. 49 of 1941). But under the definition of the present Act, it is a sufficient compliance with the provisions of this section if the intention is that of compelling the *very* employees directly affected by such closure or refusal or other employees of his or any other employer. It appears that if an employer closes down the spinning department to compel the weavers to accept certain terms, the closure will amount to a lock-out even though no condition is sought to be imposed on the spinners, who are directly affected by the closure. Similarly a closure of one mill concern to aid the employer of other mill concern or even a hosiery or other industrial concern to compel those other employees to accept a condition will also constitute a lock-out.

Sub-section (25): Member:—*Cf. Old law:—*This definition, with the exception of the proviso which is new, reproduces the definition in section 3 sub-section (20) of the Bombay Industrial Disputes Act, 1938, with the words "who *has paid* a subscription of not less than *two annas* per month" substituted for the words "*who has been paying* a subscription of not less than *one anna* per month." The effect of the amendment seems to be that it is a sufficient compliance with the section even if the person has paid only one instalment of subscription of not less than two annas per month, and it is not necessary that he must "have been paying" it continuously thereafter, provided that his subscription is not in arrears for three months or more at the relevant time.

Analysis:—A member means a person

- (i) who is an ordinary member of a union, and
- (ii) who has paid a subscription of not less than two annas per month, and
- (iii) whose subscription is not in arrears for a period of three months or more at the relevant time.

If any subscription of not less than two annas per month has been paid, it is not necessary that he must have been continuously paying thereafter, provided he has not been in arrears for three months or more at the time at which his membership is to be determined. Member of a trade-union is thus not any member on the register of a trade-union, but one who is a member and who has paid a subscription of not less than two annas per month, provided his subscription is not in arrears for a period of three months or more..

Payment of subscription—a necessary ingredient:—An employee whose name is entered in the register of the members of a union, but who has not paid a single instalment of subscription cannot be said to be a member of the union (App. No. 13 of 1940).

Effect of proviso: How far arrears condoned:—Even under the previous law it was held that a member does not cease to be as such only because one or two instalments of subscription have remained in arrears (App. No. 8 of 1940). The proviso made in the present definition has made the position clear, and has provided that membership will only cease if the person is in arrears for a period of three months or more, next preceding the time when his membership is considered.

Importance of the question of membership:—A person can be said to belong to a registered union if he is a member of the union. So it was held under the Bombay Industrial Disputes Act, 1938, that if the person was not a member of the registered union, the union could not be a representative of the employee and cannot act on his behalf (App. No. 13 of 1940). Under the present Act a representative union is entitled to act as a representative of employees, whether any of the employees directly affected by the change are its members or not, so it would be entitled to maintain such an application for illegal change even for a non-member; and in case of Qualified or Primary Union, which has been registered as the representative union and which can act only if a majority of persons directly affected by the change are its members, a provision is made enabling it to act as a representative of employees on behalf of a non-member who may choose such a union for the purpose of representing him in any proceeding. This question can only arise now in the case of a Qualified or a Primary Union which has not been authorised by the non-member to represent him in the proceeding.

Sub-section (26) : Occupation: *Cf. Old law* :—This definition is reproduced from the one in section 3 sub-section (21), with the word "undertaking" substituted for the word "industry". The substitution has been necessitated as the Registrar has been empowered under section 11, after due inquiry to recognise any concern in an industry as an undertaking and any section of an undertaking as an occupation; while under section 5 of the Bombay Industrial Disputes Act, 1938, he was empowered to recognise any section of an industry as an occupation. (See section 11.)

Sub-section (28) : Primary Union :—The Primary Union is the creation of the present Act by way of a small beginning of trade unionism even in a single undertaking. (See section 13.)

Sub-section (29) and (30) : "Qualified Union" and "Registered Union":—Under the present Act these unions have been specially dealt with under section 13. (See section 13.)

Sub-section 32 : Representative of Employees:—This definition has been substantially recast from the one in section 3 sub-section (29) of the Bombay Industrial Disputes Act, 1938, and it has been specially dealt with under section 30. (See section 30.)

Sub-section (33) : Representative Union :—This definition has been substantially reproduced from the one in section 3

sub-section (30) of the Bombay Industrial Disputes Act, 1938, except that the minimum membership has been brought down from 25 to 15 per cent. and the qualifying period has been reduced from six to three months. It has been specially dealt with under section 13. (See Section 13.)

Sub-section (36): Strike: *Cf. Old Law* :—This definition has been reproduced from the one in section 3 (33) in the Bombay Industrial Disputes Act, 1938, except that the words "*in any industry*" at the end of the definition have been deleted.

***Analysis* :—**Strike means

(i) a total or partial cessation of work by the employees in an industry, acting in combination or a concerted refusal or a refusal under a common understanding to work or to accept work, where

(ii) such cessation or refusal is in consequence of an industrial dispute.

Essentials of a strike :—The three essential requirements are:—(1) Cessation of work or a refusal to work or to accept work; (2) acting in combination or under a common understanding or with concerted action; and (3) in consequence of an industrial dispute.

(1) **Cessation of work : (a) *when strike occurs* :—**On the analogy of a lock-out it seems that a strike does not take place on the day on which the notice of the intention to strike work on a future date is given. It begins on the date when there is actual cessation of work or a refusal to work or to accept work. If on that day the workers came for work, and none of them stopped work or refused to work or to accept work, there could not be any strike. (Cf. App. No. 131 of 1945.)

(b) ***Cessation explained* :—**The expressions "partial cessation of work" and "refusal to continue to work" must mean refusal by the employees to do work in accordance with the hours fixed for work or in accordance with the custom or usage of the industry (App. No. 28 of 1942).

(c) ***Cessation by non-attendance* :—**It is not at all necessary for cessation of work that work ought to be started and then stopped. Even a refusal to go to work at all would amount to a strike, as it would be cessation of work by non-attendance (App. No. 71 of 1945).

(d) *Time or intention not relevant* :—The cessation of work even for a short time (App. No. 23 of 1943), or stopping work even to approach the authorities only to represent the case without any intention to resort to a strike, would also amount to a strike (App. No. 9 of 1942). It is true that some of many workers might not be in favour of a strike, but the question has to be determined not with reference to what their view of the strike was but with reference to their actual conduct; otherwise every one of the workers could come and say that he himself was against the strike but that he refrained from coming to work because other persons were striking work (App. No. 148 of 1943).

(2) **Concerted action** : *Simultaneous stoppage of work* :—

If the workers in a number go out leaving the place of work, it amounts to a concerted action (App. No. 9 of 1942). If the leader of the workers himself stops work in protest and other workers follow, they do so with concerted action, because each of the workers stops working one after the other. There could not have been almost a simultaneous stoppage of work without concerted action, i. e. without the workers being resolved through their leader that they must stop work that day (App. No. 57 of 1941—followed in App. No. 228 of 1943). If the workers do not resume work on being warned, and actually hold a meeting to decide to continue the strike, and only resume work after the intervention of their Union leader, there is clearly a concerted action on their part (App. Nos. 10 and 11 of 1940).

But where the workers did not start work, and it was proved that only 200 workers had demanded that Muslim workers should not be continued in employment, while a substantial majority of workers amounting to about 3500 in number were in favour of amicably settling the matter between them and the Muslim workers and the remaining workers, and for that reason had even held a meeting to adopt a resolution to the effect that work should be resumed jointly in collaboration with the Muslim workers, cessation of work cannot be said to be due to any alleged common understanding. Therefore, although the action of 200 workers who acted in concert may come within the definition of a strike, action of remaining 3500 workers would not amount to a strike and no declaration of illegal strike can be given if none of those 200 workers can be ascertained (App. No. 64 of 1946).

(3) **Cessation in consequence of an industrial dispute** : (a) *Proximate cause* :—If a strike is resorted to as a

protest to the delay made by the Government Labour Officer in replying to the request of the workers to take steps for an increase in their wages, it is not correct to say that in as much as the immediate grievance was about the delay made by the Labour Officer in taking steps under the Act, the grievance about low wages was a remote and not a proximate cause for the strike (App. No. 57 of 1941). If the strike is in consequence of two reasons, one only of which relates to an industrial matter, the whole strike must be regarded as illegal if it is resorted to without giving a notice of change with respect to the industrial matter (App. No. 7 of 1943).

(b) *Cessation must not only relate to an industrial dispute but must be in consequence thereof: (i) Demand in connection with an industrial dispute:—*If the workers demanded an increase in wages or reinstatement of a dismissed worker and stopped working on their demand being not conceded, this would clearly be a strike because the refusal of the demand was the direct cause of cessation of work which was, therefore, in consequence of an industrial dispute (App. No. 4 of 1944-F. B.).

(ii) *Demand for a holiday not connected with any industrial dispute:—*The demand for a holiday is also a demand with reference to an industrial matter and an industrial dispute may arise when a Labour Union makes the demand and the Mills express their inability to grant it (App. No. 2 of 1941). But where the workers in a body demand a holiday for any purpose not connected with any industrial dispute or intimate their desire to the employer and state further that they will not attend on that day even if the holiday was not granted, it can hardly be said that their cessation of work is in consequence of their demand being turned down. It is only an adherence to their already expressed desire to have a holiday and is not the direct result of the refusal to grant a holiday. Such cessation of work would not amount to a strike (App. No. 4 of 1944-F. B. wherein App. Nos. 2 of 1941 and 27 of 1942 are followed). On this principle it has been held that cessation of work on the Foundation or the Anniversary day of the Labour Union (App. No. 2 of 1941); or on the Independence Day (App. No. 4 of 1944-F. B.); or on a Muslim festival day, e.g. Oras Day or Vashi Id Day (second day of Ramzan Id) even by non-Muslim workers, and even though they had resorted to a courteous procedure of taking permission for their absence (App. Nos. 34 and 36 and 109 of 1944); or for

the purpose of taking part in municipal elections, even though the workers had sought an exchange of holiday on that ground (App. No. 27 of 1942) was held not to amount to a strike. Cessation of work on political grounds or festival reasons or for any reason not connected with an industrial dispute will not amount to a strike. It has been even observed in a decision of the Full Bench of the Industrial Court that it is rightly conceded that if the workers in a body abstain from working on any day without giving any reason for doing so and if it cannot be proved that such abstention was due to any industrial dispute, it would not come under the definition of a strike because it was not in consequence of any industrial dispute (App. No. 4 of 1944—F.B. *obiter*). As to the burden of proof it was held that where cessation is admitted but the management is not told the reason for doing so, it would be indeed impossible for the management to prove that the cessation was in consequence of an industrial dispute, and therefore, the burden of proving that it was not a strike on the ground that it was not in consequence of an industrial dispute, lay upon the workers (App. No. 22 of 1943). This earlier decision has not been overruled by the above-mentioned Full Bench decision, where the observations made were only *obiter*, and were not necessary for the decision of that case.

(iii) *Observing a holiday on a day converted into a working day.*—If a working day is converted into a holiday and *vice versa* in accordance with the provisions of the Factories Act, 1934, the employees are not entitled to remain absent or refuse work on that day, which though a Scheduled holiday is converted into a working day. If the employees refuse to go to work at all, it is in consequence of an industrial dispute relating to this conversion, and the action of the employees amounts to an illegal strike (App. No. 71 of 1945).

(iv) *Stoppage of work on a day wrongly taken to be a holiday.*—If the employees had actually observed the changed holiday on account of Holi festival, their stoppage of work on a day wrongly taken to be a holiday would amount to a strike (App. No. 23 of 1942).

Consequences of cessation of work which does not amount to a strike.—If the workers stay away from work for any reason not connected with any industrial dispute they do so at their own risk of losing the day's wages and bring themselves

within the probability of discharge from employment; but they cannot be punished for an illegal strike nor they can be dismissed for misconduct because under Standing Orders going on a strike is not a misconduct unless it is against the provisions of the Act (App. Nos. 2 of 1941 and 27 of 1942—followed in App. No. 4 of 1944—F.B.). Such cessation though legal under this Act, may be punishable under the Payment of Wages Act, 1936. Under section 9 (2) and rule 16 of the Payment of Wages Act, 1936, an employer may be entitled to deduct such amount not exceeding 8 days' wages as may under the written contract of service be due to him in lieu of due notice of ceasing work (which under Standing Order 19 is 13 day's wages), if the strike is resorted to by ten or more workers, acting in concert, without due notice and without reasonable cause. But no such deduction can be made for breach of contract in case of an employee under 15 years or a woman, and unless the contract of employment in writing provides for deduction in lieu of such notice of ceasing work not exceeding 15 days or the period of notice which employer has to give, and unless such provision is displayed at or near the main entrance of the Factory. If the number is less than ten or in individual cases, the employer cannot deduct anything from earned wages, and must seek his remedy at common law by suing the workman for a breach of contract. It may be noted in this context that though the definition of "wages" under the present Act is very extensive, for the purposes of this Act it cannot be applied in derogation to the definition given in the Payment of Wages Act, 1936, which would cover only normal wages and dearness allowance, but no sort of *ex-gratia* payments or other amenities. (See "Wages" section 3 (39).)

Effect of deletion of the words "in any industry" in this definition": *Sympathetic Strikes* :—The deletion of these words appears to have a marked effect on sympathetic strikes. If the employees in the woollen industry stop or refuse work not in consequence of any industrial dispute in that industry but to extend their sympathies to their fellow workers in the cotton textile industry in consequence of an industrial dispute in that industry between the employer and the employees, it is not in consequence of an industrial dispute in the industry concerned, but in consequence of an industrial dispute "in any industry." Such sympathetic cessation would not be a strike under the present definition, though it would have been covered under the definition in section 3 (33) of the Bombay Industrial Disputes Act, 1938. But where the language of the section is clear and unambiguous recourse cannot be had

to pre-existing law (1891) 2 A. C. 107, 144, 145 Bank of England v. Vagliano). It seems that this section would be interpreted so as to embrace even such sympathetic strikes, which are also in consequence of some industrial dispute, though not necessarily in the industry concerned.

Sub-section (37) : Undertaking : Cf. *Old law* :—Under the Bombay Industrial Disputes Act, 1938, though the word was used at many places, it was nowhere defined; the present Act fills up the lacuna.

Analysis—Undertaking has been defined as any concern in any industry, which has been recognised as such by the Registrar for the purposes of this Act under section 11. (See sub-section (26) and section 11.)

Sub-section (38) : Union : Cf. *Old law* :—This definition has been substantially reproduced from the one in section 3 (34) of the Bombay Industrial Disputes Act, 1938, with the words "of employees" substituted for the expression "(other than a union formed for the purpose of regulating the relations between employees and employers)". This substitution has been necessary, in view of the newly enacted definition of "Association of employers" in section 3 (5) for the recognition of which a provision is made in section 27. (See section 27.)

Analysis :—By defining "Union" as a Trade Union of employees, registered under the Indian Trade Unions Act, 1926, it has been impliedly laid down that no union of employees which has not been registered under that Act will have any standing under this Act.

Sub-section (39) : Wages : Cf. *Old law* :—Under the Bombay Industrial Disputes Act, 1938, though the word "wages" was frequently used, it was nowhere defined. The present Act fills up that lacuna by providing an exhaustive definition of this word, which is very important and which is intended only for the purposes of this Act.

How the term "Wages" was interpreted under the old law :—As the Bombay Industrial Disputes Act, 1938, did not contain a definition of the term "wages" it was interpreted in the light of the accepted connotation of the term and its definition in the analogous statutes, especially the Payment of Wages Act, 1936, which immediately preceded it. (App. No. 4 of 1939).

(a) *Dictionary Meaning* :—The Oxford English Dictionary explained "Wages" as "a payment to a person for service rendered; now especially the amount paid periodically for the labour or service of a workman." Stroud's Judicial Dictionary, quoting an American case, explained it as "compensation paid to a hired person for the services". It thus appears that wages are only the personal earnings of a worker.

(b) *Statutory definitions* :—(i) Workmen's Compensation Act, 1923, did not define it but laid down that "wages" includes "any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of a travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment."

(ii) Payment of Wages Act, 1936, for the first time defined wages on an entirely new basis, making a radical departure from the past definitions and the commonly accepted notion of wages. It defined "wages" to mean *all* remuneration capable of being expressed in terms of money, which would if the terms of contract of employment, express or implied, were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment.

It also included any bonus or other additional remuneration, of the nature aforesaid which would be so payable, and any sum payable to such person by reason of the termination of his employment.

But it did not include—

(a) the value of any house, accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by the general or special order of the Governor General in Council or Local Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

This Act, therefore, departed from the conventional meaning of "wages" as "wages earned" (42 Bom. L. R. 955) by a person by the sweat of his brow, and which could not be said to be his unless he had toiled and sweated for it. The Act created an academic notion of wages as being all remuneration to which the worker would be entitled on fulfilment of his contract, i. e. a notional slice that would be earmarked and stamped as his wages no sooner he took up his job. It was of course true that the notional slice could not be his before it was handed over to him, but the slice was his, even though he did not comply with the conditions which made it payable upon regular attendance, good work or conduct or behaviour or otherwise.

(iii) *Present definition* :—The present definition takes a still longer stride in extending the scope of the notional slice, which would be of the employee, irrespective of the fact that it is made payable conditionally, and is made to include even things specifically excluded in the other definitions, and any bonus, allowances (including dearness allowance), reward or additional remuneration. The basis of the definition seems to be the presumption of the *bona fides* of the worker to make an honest living by the sweat of his brow; that he is sure to try his best to satisfy his employer in all respects and that if he is casually absent or is responsible for spoilt work or has lapsed from the desired conduct or behaviour or has failed to comply with any other condition imposed on him, it must be in spite of himself and without any *mala fides* on his part, and may be, he may have good reason or provocation for such default or disobedience or non-compliance.

Analysis :—"Wages" is defined under this Act as

(i) all kinds of remuneration, capable of being expressed in terms of money, and

(ii) payable to an employee in respect of his employment or work done, in such employment.

It further includes,

(i) any bonus, allowances, (inclusive of Dearness Allowance), reward or additional remuneration;

(ii) value of any house, accommodation, light, water, medical attendance or other amenity or service;

(iii) any contribution by employer to pension or provident fund;

(iv) any travelling allowance or the value of any travelling concession;

(v) any sum paid or payable to or on behalf of the employee to defray special expenses entailed on him by the nature of his employment;

(vi) any gratuity payable on discharge.

All kinds of remuneration capable of being expressed in terms of money :—This means that "wages" includes only those things the value of which can be expressed in terms of money, unless they are specially included in the definition. Besides the things specifically mentioned, *e.g.* value of house, accommodation, light, water or even medical attendance and other amenity or service which it may be difficult to express in terms of money, it would include uniform, tuition, cheap grain shops, free board and lodging, free cottage and the like amenities. But except items (i) to (vi), it would not include matters, the value of which cannot be expressed in terms of money, *e.g.* a promise of apprenticeship to son etc. The test in all these cases is not what the workman saves by being provided with the amenity but the actual worth of the things supplied to him.

Payable to a person in respect of his employment or work done in such employment :—The use of this expression is very significant in this definition, when we compare the definition in section 2 (vi) of the Payment of Wages Act, from which the words "if the terms of the contract of employment, were fulfilled" are deleted. Thus the Legislature affords protection against the misuse of unchartered bargaining power at the disposal of the employer, so that he may not impose any unfair or arbitrary terms on the employee. Even under the definition in the Payment of Wages Act, conditions in matters of regular attendance, good work or conduct or other behaviour were excluded. This definition is thus made more extensive in its scope as it excludes all kinds of conditions, imposed on the employee. Non-compliance with any sort of condition as to regular attendance, good work, or conduct or other behaviour, or with respect to engagement for a particular period or engagement for completion of a certain amount work will not exclude the amount dependent thereon from "wages". Hence bonus or rewards dependent on good attendance, efficiency or on completion of a particular work within a particular period would

not be excluded from the definition of "wages" for the purposes of this Act. The only requirement is that the amount must be payable in respect of employment or work done in such employment, irrespective of the conditions attached with respect to the payment thereof.

(1) Any bonus, allowances, reward or additional remuneration: (i) *Bonus*:—Under the Payment of Wages Act, 1936, "wages" included any bonus or additional remuneration capable of being expressed in terms of money which would be payable in respect of employment or work done, if the terms of contract other than as to regular attendance, good work or conduct or behaviour or otherwise, were fulfilled. Following its analogy, it was held that "wages" imported the idea of legal liability on the part of the employer to pay a definite and well settled consideration, arising from a legal relationship of employer and employee; and so any *ex-gratia* payment which had no relationship whatsoever with the amount of work done and which may be withheld at the option of the employer could not be regarded as "wages" (App. No. 158 of 1943). In another decision relating to Sukhadi and Extra-bonus it was held: "Wages are a matter of right. Dearness allowance is also a matter of right under the awards of the Industrial Court. A regular Bonus is also a matter of right under an agreement between the Textile Labour Association, Ahmedabad and the Ahmedabad Millowners' Association. But as far as the extra-Bonus and Sukhadi are concerned, it depends entirely on the discretion and goodwill of the management; and so a member of the staff who has not the goodwill of the management cannot get these amounts." (App. No. 162 of 1943). In another Full Bench decision the question whether bonus formed part of wages or not was left undecided, as the decision was not necessary in view of the decision having been arrived at on the ground that bonus being an *ex-gratia* payment, grant thereof subject to any condition whatsoever (*e. g.* to be paid only to persons continuing on the muster roll till the date of payment), would not be a circumstance affecting adversely the condition of employees as it obtained before the grant, if it governed the entire class of workers without any discrimination; and so the failure to give a notice of change would not be an illegal change as the change was not likely to lead to an industrial dispute (App. No. 87 of 1944—F. B.). Earl of Birkenhead had observed in (1923) 39 TLR 294: "Bonus is used to describe payments made of grace, and not as of right. But it may include payments made because legally due (*e. g.* regular bonus

under the bonus scheme or an agreement), but which parties contemplated were not to continue indefinitely". In 42 Bom. L. R. 955 *Arvind Mills Ltd. v. K. R. Gadgil*, it was held that "wages" means "wages actually earned and not potential wages"; and therefore, does not include bonus, which is not earned as an extra remuneration under the terms of a bonus scheme. In 46 Bom. L. R. 795 it was held that bonus payable in exceptional circumstances under an agreement between the Textile Labour Association and the Millowners' Association and made dependent on past work done, by making it payable to employees whether at present in employment or not, or on number of days for which the employees worked, is included in the term "wages"; for it cannot be said that it was decided to be paid merely as a matter of grace or that its object was to induce or ensure better or more efficient work. Thus the trend of the decisions was that any bonus, which was an *ex-gratia* payment dependent on the sweet will of the employer could not form part of "wages", if it had no relationship with the amount of work done.

Under the present definition it seems that the deletion of the words "of the nature aforesaid which would be so payable", which qualified the words bonus or additional remuneration, and inclusion of reward and allowances in the definition would imply that even such *ex-gratia* payments, and any bonus dependent on any conditions whatsoever, *e.g.* of efficiency, good attendance, good conduct, or the name continuing on the muster roll till the date of payment etc. would be included in "wages."

Reward and bonus:—Bonus is included in the term "reward". A "reward" is anything given or paid in return for anything done as kindness, service etc. It includes additional gratuitous payment for work already done over and above a payment according to agreement. Such additional payment is not pure gift because a gift may have no relation to any work done or to be done by the donee, but it is a reward inasmuch as it is asked for as an extra payment for work actually done (Ref. No. 1 of 1945-F. B.). Such reward by way of extra bonus over and above a regular bonus paid under an agreement as of right, or by way of conditional payment, *e.g.* efficiency and good attendance, bonus would form part of "wages" under the present Act, though not under the Payment of Wages Act, 1936.

Allowance: (i) Dearness Allowance:—Dearness allowance is being demanded by the worker in connection with the work he

is doing, although the basis of the demand is a rise in the cost of living. In demanding it the worker in effect says that due to rise in prices, the money which he was receiving prior to a certain day had ceased to give him adequate purchasing power; that the amount originally paid to him did not go far enough, and that he should be paid something more than what he was getting, whether it may be called by "additional wages" or by "dearness allowance," to restore him the fall in the "real wages" (Sub. No. 1 of 1945-F.B.). In effect it was held so in a Full Bench decision in App. No. 33 of 1941, "The term "wages" would include dearness allowance which is being paid in cash". Under the present definition also dearness allowance is specifically included in the definition.

(ii) *Grain allowance* :—It was held in App. Nos. 62 to 66 of 1945-F.B. that grain allowance, though converted subsequently into a cash allowance, was entirely a gratuitous payment and could be rightly excluded in calculating bonus as it did not form part of "wages". But under the present definition such allowances are included in the definition of "wages" by insertion of the words "allowances (inclusive of dearness allowance), rewards etc." in the present definition.

(2) *Amenities* :—The present definition includes for the first time in the term "wages" the value of house accommodation, light, water, medical assistance or other amenities or service, e. g. by way of supply of uniform, free tuition or cheap food stuffs etc. The test in all these cases is not what the employee saves due to these amenities, but the actual value of the things supplied to him.

(3-6) *Employer's contribution to pension or provident fund, travelling allowance or concession, special expenses and gratuity on discharge* :—These items were hitherto excluded from the definition of "wages", but have been specifically included under this Act.

Notice-pay :—The word is of an artificial character and does not represent any legal definition or description. From the legal point of view it may mean either of the following claims:—

(i) The amount payable to an employee as damages for wrongful dismissal;

(ii) The amount payable as damages for termination of employment in breach of the contract;

(iii) The amount stipulated to be payable on termination of employment by the contract of employment.

The Payment of Wages Act, 1936, expressly included claim (iii) in the definition, and did not include first two claims, which is not a sum payable by reason of the termination of employment, but a sum payable by reason of the damages suffered by dismissal.

The deletion in the present definition of the words "any sum payable to such person by reason of the termination of his employment" from the definition of "wages" under the Payment of Wages Act, 1936, seems to imply that such notice-pay of any kind is not intended to be included in the term "wages". Such amount is payable not in respect of the employment or work done in such employment but in respect of the termination of employment or by reason of damages suffered in consequence; and so it cannot fall within the present definition. In Civil Revision App. Nos. 138 of 1945 and 611 of 1944 (Kasambhai Kalubhai v. The manager, the Maheshwary Mills Co. Ltd.) Weston J. observed: "It can be urged that Payment of Wages Act has no application at all to these circumstances, and order under that Act may not be justified, for thirteen days' wages payable on dismissal had then become an amount of damages due to the operatives."

Consequences of the differences in the definitions of "wages":—The present definition is only meant for the purposes of this Act. It may happen that a worker may not have any remedy under the Payment of Wages Act, 1936, to recover these "wages", and must rest content with his only remedy under this Act for a declaration of illegal change by non-payment of wages and a consequent conviction of the employer. This would happen in case of *ex-gratia* payments, amenities and other payments dependent on fulfilment of any condition other than in matter of regular attendance, good work or conduct or behaviour or otherwise. If a monthly servant left in the middle of the month he will not be entitled to wages as none will have been payable to him by reason of the terms of his contract. Similarly, if a worker contracts to manufacture ten pieces a fortnight and to earn his remuneration only if he manufactured ten pieces and not less, he will be entitled to wages only if he manufactured the contracted number of pieces and not otherwise; unless the circumstances show that it was a condition relating only to efficient work. In such cases though the worker cannot recover the wages, he can get the employer convicted for an illegal change under this Act, as the definition under the present Act totally disregards any such conditions in the contract of service in the determination of "wages".

CHAPTER II

Authorities to be Constituted or Appointed under this Act.

4. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Commissioner of Labour.

Commissioner of Labour.

(2) The Provincial Government may by general or special order notified in the *Official Gazette* confer and impose all or any of the powers and duties of the Commissioner of Labour on any person whether generally or for any local area.

Cf. Old law :—Under the Bombay Industrial Disputes Act, 1938, the definition of "Commissioner of Labour" was given, but no provision was made as to the mode of his appointment, nor any provision was made to empower any other person to act as such.

Commissioner of Labour :—This newly enacted section mandatorily provides for the appointment of the Commissioner of Labour by the Provincial Government by notification in the *Official Gazette*. It also provides that the Provincial Government *may* by general or special order, notified in the *Official Gazette*, confer and impose all such powers and duties on any person generally or for any local area. In such case such person will be deemed to be the Commissioner of Labour in respect of those powers and duties under section 3 (9). (See Chapter VII for the Powers of the Commissioner of Labour of settlement and alteration of Standing Orders.)

5. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the whole of the Province.

Registrar and Assistant Registrars.

(2) The Provincial Government may, by similar notification, appoint a person to be the Assistant Registrar of Unions for any local area and may, by general or special order, confer on such person all or any of the powers of the Registrar of Unions under this Act.

Registrar :—This section is a reproduction of section 4 of the Bombay Industrial Disputes Act, 1938. It empowers the Pro-

vincial Government to appoint the Registrar of Unions for the purposes of this Act for the whole Province, and also to appoint Assistant Registrar with delegated powers and duties for local areas, by notifications in the *Official Gazette*. In such cases, the Assistant Registrar shall be deemed to be the Registrar in respect of the powers and duties conferred and imposed on him under section 3 (31). (See Chapters III and IV for powers and duties of the Registrar of Unions which include the registration of unions, determination of their eligibility, recording of agreements and awards, and receiving notices and reports provided for in the Act.)

6. (1) The Provincial Government shall appoint a Conciliators, person to be the Chief Conciliator. His jurisdiction shall extend throughout the Province.

(2) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Conciliator for any industry in a local area specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Special Conciliator for such local area or for such industry for such local area or for such industrial dispute or class of disputes as may be specified in the notification.

Chief Conciliator :—Under section 21 (1) of the Bombay Industrial Disputes Act, 1938, the Commissioner of Labour was to be *ex-officio* Chief Conciliator, with a jurisdiction extending over the whole Province. This Act on the other hand in section 6 (2) provides for his distinct and separate appointment, with the same jurisdiction. The Commissioner of Labour will cease to be the *ex-officio* Chief Conciliator on the appointment of the Chief Conciliator under this Act.

Conciliators and Special Conciliators :—Section 6 (2) and (3) substantially reproduces provisions in Section 21 (2) and (3) of the Bombay Industrial Disputes Act, 1938. It provides for the appointment of a Conciliator for any industry in a local area, or a Special Conciliator for a particular local area or an industry therein or for an industrial dispute or a class of disputes, by means of a notification to that effect in the *Official Gazette*.

7. (1) When an industrial dispute arises the Provincial Government may, by notification in the *Official Gazette*, constitute a Board of Conciliation for promoting the settlement of such dispute.

(2) The Board shall consist of a Chairman who shall be an independent person and an even number of members. Every member shall be either an independent person or a person chosen by the Provincial Government from a panel representing the interests of the employers or employees, provided that the number of persons chosen from panels representing employers and the number chosen from panels representing employees shall be equal. Such panels shall be constituted in the manner prescribed.

(3) If any vacancy occurs in the office of the Chairman or a member of the Board before the Board has completed its work, such vacancy shall be filled in the manner prescribed and the proceedings shall be continued before the Board as so reconstituted from the stage at which they were when the vacancy occurred.

Board of Conciliation:—These provisions practically reproduce the provisions for the Board of Conciliation in section 23 of the Bombay Industrial Disputes Act, 1938, except that the member of the Board under this Act need not necessarily be an independent person, if he is chosen by the Provincial Government from the panel representing the interests of the employers and employees. This section provides for the appointment by the Provincial Government of a Board of Conciliation instead of a Special Conciliator under section 6 (3) to promote the settlement of an industrial dispute. Such Board shall consist of an independent Chairman and an equal number of the representatives of the employers and employees, either independent persons or persons selected from permanent panels to be constituted in such manner as may be prescribed. Any person is deemed to be an independent person if he is not connected with the particular industrial dispute under conciliation and with the industry affected thereby. (See Chapter X Conciliation Proceedings for procedure and powers of the Conciliators and the Board etc., and rules in Appendix I as to the constitution of panels and filling up of vacancies.)

8. (1) The Provincial Government may, by notification in the *Official Gazette*, appoint Labour Officers for any local area or areas.

(2) The Provincial Government may, by similar notification, appoint Assistant Labour Officers for any local area or areas, and may by general or special order confer on them all or any of the powers of the Labour Officer under this Act.

Labour Officer :—Under Section 22 of the Bombay Industrial Disputes Act, 1938, the Provincial Government could appoint a Labour Officer for any local area or a "particular industry". Under the present Act the Provincial Government may appoint Labour Officers only for any local area or areas, and not for any particular industry; and it may also appoint Assistant Labour Officers for any local area or areas, and may confer on them by general or special order all or any of the powers of the Labour Officer, by means of a notification to that effect in the *Official Gazette*. In such cases the Assistant Labour Officer in respect of the powers and duties conferred and imposed on him is deemed to be the Labour Officer under section 3 (22).

(See Chapter VI for powers and duties of the Labour Officer.).

9. The Provincial Government shall, by notification in the *Official Gazette*, constitute one or more Labour Courts having jurisdiction in such local areas as may be specified in such notifications and shall appoint persons having the prescribed qualifications to preside over such Courts :

Provided that no person shall be so appointed unless he possesses qualifications, other than the qualification of age, laid down under section 255 of the Government of India Act, 1935, for being eligible to enter the subordinate civil judicial service in the Province of Bombay.

Labour Courts :—"The provisions of this Act for constituting Labour Courts are an innovation so far as this country is

concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbance in the peace of the industry and cause serious loss of production and of workers' earnings. The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Courts which will be instituted under this Act, to ensure impartial and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up" (Statement of Objects and Reasons).

The Provincial Government is required to constitute by notification in the *Official Gazette* one or more Labour Courts having jurisdiction in particular local areas, and appoint persons with the requisite qualifications (except as to age) for appointment in the subordinate civil judicial service in the Province of Bombay. (See Chapter XII for powers and procedure of Labour Courts and rules in Appendix I for the qualifications of eligibility.)

10. (1) The Provincial Government shall constitute Industrial Court. a Court of Industrial Arbitration.

(2) The Industrial Court shall consist of three or more members, one of whom shall be its President.

(3) Every member of the Industrial Court shall be a person who is not connected with any industry.

(4) Every member of the Industrial Court shall be a person who is or has been a judge of a High Court or is eligible for being appointed a judge of such court :

Provided that one member may be a person not so eligible, if in the opinion of the Provincial Government he possesses expert knowledge of industrial matters.

*Cf. Old law :—*Under section 24 of the Bombay Industrial Disputes Act, 1938, a Court of Industrial Arbitration known as the

Industrial Court was for the first time constituted by the Notification No. 2935/34 dated 19th May, 1939, to provide some permanent official machinery for arbitration in order to decide industrial disputes referred to it. Such a permanent tribunal has the advantages that it eliminates delay which is necessarily involved in constituting *ad hoc* bodies and that it will by experience acquire intimacy with industrial questions.

Industrial Court:—The present Act provides for two distinct kinds of tribunals:

(i) Labour Courts to ensure relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up, and

(ii) Industrial Court to exercise appellate jurisdiction from the decisions of the Registrar, the Commissioner of Labour and, the Labour Courts, and to decide industrial disputes or matters referred to it by the Conciliator, or Board of Conciliation, or by the parties or by the Provincial Government or by a Civil or a Criminal Court or by a Labour Court or by the Commissioner of Labour.

The Provincial Government under the present Act is required to constitute such Industrial Court, consisting of *three* or more members, one of whom shall be its President, from persons who are not connected with any industry and who possess the requisite qualifications for appointment as a High Court Judge, except that one member may be a person not possessing such qualifications, if in the opinion of the Provincial Government he possesses expert knowledge of industrial matters.

Benches:—Under section 92 (2) corresponding to section 24 (3) of the Bombay Industrial Disputes Act, 1938, the Industrial Court is empowered to make rules for formation of Benches, consisting of one or more of its members, excluding the member, who was not eligible for appointment as a High Court Judge but who in the opinion of the Provincial Government possessed expert knowledge of industrial matters. Such Benches shall exercise jurisdiction and powers vested in them.

Constitution of Full Bench:—Under the Bombay Industrial Disputes Act, 1938, the Industrial Court was required under section 24 (2) to consist of two or more members, one of whom was to be its President. It was held that as long as there were two members of the Industrial Court, including the

President, the Court was properly constituted and that there was no "vacancy" in their number as contemplated under rule 62 so as to require consent of the parties to be first obtained. It was further held that even though there might be three members of the Court, it was not necessary that the Full Bench should always consist of all the three members when the reference was made by a member sitting singly (App. No. 4 of 1944-F.B.). This decision will hold good under the present Act, with the only difference that section 10 (2) requires at least *three* members to be present, one of whom shall be the President, instead of *two* members as under the previous Act.

It may be noted that the provision in section 24 (4) of the Bombay Industrial Disputes Act, 1938, permitting sitting at different places is deleted from this Act.

(For the powers and duties of the Labour Courts and the Industrial Court and for the procedure before the Labour Courts and the Industrial Court see Chapters XII and XIII.)

CHAPTER III

Registration of Unions

11. The Registrar may, after making such inquiry Recognition of undertakings and occupations. as he deems fit, recognise for the purposes of this Act—

- (1) any concern in an industry to be an undertaking;
- (2) any section of an undertaking to be an occupation.

Cf. Old law :—Under section 5 of the Bombay Industrial Disputes Act, 1938, the Registrar was empowered to recognise, after due inquiry, any section of an industry to be an occupation, and the following notifications were issued —

(i) Notification No. 1, dated 1st June, 1939, for the Cotton Textile Industry;

(ii) Notification No. 4, dated 10th October, 1939, for the Silk Textile Industry; and

(iii) Notification No. 26, dated 16th January, 1940, for the Woollen Textile Industry. (See Appendix III.) There was no provision for recognition of an undertaking.

Undertakings and occupations:—The present Act, however, provides for the recognition by the Registrar, of

(i) any concern in an industry as an undertaking; and (ii) any section of an undertaking as an occupation, for the purposes of the Act after making such inquiry as he deems fit. (See notifications in Appendix III.)

12. It shall be the duty of the Registrar to maintain in such forms as may be prescribed—

Maintenance of registers and approved list.

- (a) registers of unions registered by him under the provisions of this Act, and
- (b) a list of approved unions.

Approved list :—Under section 6 of the Bombay Industrial Disputes Act, 1938, the Registrar was bound to maintain a register of Registered and Representative Unions, and there was no provision for any list of approved unions. This section requires him to maintain in the prescribed form, (a) register^{all} of unions registered by him, viz. Representative Union^{and} and Qualified Union or Primary Union as the case may be; and (b) a list of approved unions, which complied with the conditions laid down under section 23 in respect of the regularity of meetings of the executive committee, Government audit of their accounts, and the avoidance of resort to strikes so long as means of settlement or conciliation are available under the Act, etc.

13. (1) Any union which has for the whole of the period of three months next preceding the date of its so applying under this section a membership of not less than fifteen per cent. of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

Application for registration.

(2) If in any local area no Representative Union has been registered in respect of an industry, a Union which has for the whole of the period of three months next preceding the date of its so applying under this section

a membership of not less than 5 per cent. of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

(3) If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having a membership of not less than fifteen per cent. of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in section 23 as necessary for its being placed on the approved list may apply in the prescribed form to the Registrar for registration as a Primary Union for such industry in such local area.

Said law as to Unions :—This section corresponds with sections 7, 11 and 12 of the Bombay Industrial Disputes Act, 1938. Section 7 of the Bombay Industrial Disputes Act, 1938, provided for registration of ^Rtwo kinds of unions :—

(i) a recognised union, which was recognised by the employer or by the association of employers, which had a membership of not less than five per cent. of the total number of employees employed in any industry or occupation in any local area; or

(ii) any ^{or} union, whether recognised or not, which had a membership of not less than twenty five per cent. of the total number of employees employed in any industry or occupation in a local area, during the whole of the qualifying period of *six months* next preceding the date of application for registration. This second kind of registered union with a membership of not less than twenty five per cent. of the employees was entitled to apply for declaration by the Registrar as a Representative Union, if it had such membership during the whole of the qualifying period of six months next preceding the date of such application. (See section 12 of the Bombay Industrial Disputes Act, 1938.)

That Act contemplated two sets of unions, one an industrial union of the employees in any industry generally, and the other an occupational union from persons employed in any particular

occupation or a group of occupations in any industry. (See section 3 (15) and (22) of the Bombay Industrial Disputes Act, 1938.)

But there could be only one registered union in any occupation in such industry in any local area. In areas and industries where an industrial union was registered, there might be separate occupational unions for different occupations in such industry, only if the occupational unions had more than twenty five per cent. of the employees in that occupation as its members.

If two unions applied for registration, that with the larger membership alone could be registered, and the larger union was entitled to displace the smaller union in existence. (See section 8 of the Bombay Industrial Disputes Act, 1938.)

Representative Character :—The registered unions alone had the representative character; and they alone could represent the employees and negotiate on their behalf and appear in any proceeding on their behalf. The recognised type of registered union, which must have membership between five per cent. and twenty five per cent. of the employees, could act as such if the majority of the employees affected by any particular change were its members; while the registered union which was also a representative union, having membership of not less than twenty five per cent. of the employees could act as such representative of employees even if some of the employees affected by the change were its members. (See section 3 (29) of the Bombay Industrial Disputes Act, 1938.) But in no case they can act for non-members. If none of the persons affected by the change was the member of an Union, the Union had no *locus standi* to act on their behalf (App. No. 15 of 1945).

Qualified Union :—If there was no registered union, any union, which had a membership of not less than five per cent. of the employees in an industry or occupation in any local area, could apply to the Registrar for a declaration as a Qualified Union. (See section 11 of the Bombay Industrial Disputes Act, 1938.)

It could not be a registered union and hence it could not act as a representative of employees, nor could it carry on negotiations on their behalf. It could only render assistance to the elected representatives of employees, as it was entitled to appear in any proceeding in conciliation or arbitration or before the Industrial Court, if it had more than fifty per cent. of the employees

concerned in or affected by such proceeding as its members. (See section 75 (2) of the Bombay Industrial Disputes Act, 1938.)

Registered Union under this Act:—The present Act abolishes "occupational unions" and "recognised unions", and provides for the registration of unions in any industry in any local area either as a Representative Union, a Qualified Union or a Primary Union on the principle of only one registered union for the local area in respect of any industry, larger one superseding the smaller one; and the range of activities of such a registered union is enlarged by enabling it to act as a representative of employees even on behalf of non-members, who may choose such a union for the purpose of representing them in any proceeding; and the same union is entitled to be registered for more than one local area. The scheme of the Act is to see that as far as possible workers are represented in proceedings under the Act by unions. Where a Representative Union in respect of an industry exists there is no scope for a Qualified or a Primary Union. In the absence of a Representative Union, however, a Qualified Union can exist; and a Primary Union will have a representative function only when neither a Representative Union nor a Qualified Union functions. Thus workers will be able to negotiate through their accredited representatives.

Representative Union:—Under section 13 (1), the minimum membership of a representative union is reduced from twenty five to fifteen per cent. and the qualifying period is reduced from six months to three months. Any union which has a membership of not less than fifteen per cent. of the total number of employees in any industry in any local area, during the whole of the qualifying period of three months next preceding the date of its application to the Registrar, is entitled to apply in the prescribed form for registration as a Representative Union for such industry in such local area. (See Rules in Appendix I and Forms in Appendix I A as to the form of such application.)

Qualified Union:—If there is no Representative Union in any local area in respect of an industry, under section 13 (2), any union, which has a membership of not less than five per cent. of the total number of employees employed in such industry in the said area, during the whole of the qualifying period of three months, next preceding the date of application to the Registrar, is entitled to apply in the prescribed form for registration as a Qualified Union

for such industry in such local area. (See Rules in Appendix I and Forms in Appendix I A as to the form of such application.)

Primary Union:—If there is neither a Representative Union nor a Qualified Union in respect of an industry in any local area, under section 13 (3) any union, which has a membership of not less than fifteen per cent. of the total number of employees employed in any undertaking in such industry in the said area, and which complies with all the conditions of an approved union, under section 23, relating to the regularity of meetings of the Executive Committee, Government audit of their accounts, and the avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act etc., is entitled to apply in the prescribed form for registration as a Primary Union for such industry in such local area. It may be noted that though the minimum membership of fifteen per cent. for a Primary Union is only of any *undertaking* in any industry in the local area, the Union is considered to be the Primary Union for such industry in such local area. (See Rules in Appendix I and Forms in Appendix I A as to the form of this application.)

Representative Character:—Under section 30 (i) a Representative Union of the industry is entitled to act as the representative of employees in such industry in such local area. It is not necessary that some or even any of the persons directly affected by the change concerned should be its members. It is as of right entitled to act on behalf of even the employees in such industry who are not its members and do not belong to it. If there is no such Representative Union, a Qualified Union or a Primary Union as the case may be is entitled to act as the representative of employees, only if the majority of the employees directly affected by the change concerned are its members, i. e. if more than fifty per cent. of the persons directly affected by the change concerned are its members; or if the employees concerned, who though do not belong to it as members, authorise in the prescribed manner such a union for the purpose of representing them. (See section 30 (ii) and (iii).) Thus under the scheme of the present Act even a Qualified Union with only five per cent. membership of the employees in any industry in any local area, or even the newly created Primary Union with a fifteen per cent. membership of the employees in only a single undertaking in the industry is given a representative character, place and function to act on behalf of the employees concerned in any industry if more than fifty per cent. thereof belong

to it or on behalf of even non-members who may choose such union and authorise it to represent them in any proceeding.

Registration for more than one local area :—Under section 22 the same union may in the prescribed manner be registered for an industry for more local areas than one. (See section 22 and rules in Appendix I as to the manner prescribed.)

Duty to submit returns :—Every registered union shall submit to the Registrar on the prescribed dates in the prescribed manner periodical returns of its membership. If the provision is contravened, the union may be penalised under section 109 with fine which may extend to Rs. 100/- or Rs. 200/-, if there is a previous conviction.

Liability of the Executive of the Union :—Section 117 provides that the executive of the union to which the management of its affairs is entrusted shall be bound to do everything required to be done by the union under this Act, and if default is made, the person authorised in that behalf or if none is authorised every member thereof who is bound to do so shall be personally liable.

Procedure for registration of Union :—Any union which is entitled to apply under section 13 for registration must first make an application in the prescribed form under section 13 to the Registrar. On receipt of such application with the prescribed fee, the Registrar, after making such inquiry, as he deems fit, is to satisfy himself,

(i) whether the union fulfills the conditions requisite for registration under section 13, and

(ii) whether the union is not otherwise disqualified from registration. Such disqualification may be,

(a) *Union not registered under the Trade Unions Act :—*if the union is not an " Union " under section 3 (38), i. e. if it is not registered under the Indian Trade Unions Act, 1926 ;

(b) *Registration not bona fide in interest of employees :—*if the application is made not *bona fide* in the interest of employees, but is made in the interest of the employers to the prejudice of the interest of the employees (section 14 proviso (iv)) ;

(c) *Application for re-registration :—*if the union is not entitled to apply for re-registration (section 17 (2)).

If as the result of the inquiry the Registrar is satisfied, he shall enter the Union in the Register of Unions maintained under section 12, and shall issue a certificate of registration in the prescribed form.

If two or more unions apply for registration, the Registrar is to register one union only in respect of the same industry, with the larger membership of employees employed in such industry in the local area, and as far as possible only a Representative Union shall be registered in preference to any other union, and failing that a Qualified Union in preference to one which is not so. (See section 14.)

Procedure for registration of another union in place of an existing registered union:—The larger union is entitled to displace the smaller union in existence. The applicant union which has a larger membership of employees employed in the industry in any local area, than that of the existing registered union, during the whole of the qualifying period of three months next preceding the date of its application, is entitled to apply under section 16 with the prescribed fee. (See Rules in Appendix I as to the fee prescribed.) The Registrar shall upon such application issue a notice upon the existing registered union to show cause within one month of the receipt of the notice why the applicant union should not be registered in its place, and a copy of the application and the notice shall be forwarded by him to the Labour Officer. Such application shall also be published in the prescribed manner not less than 14 days before the expiry of the period of the notice. (See Rules in Appendix I relating to publication.) After the expiry of the notice, if after holding such inquiry as he deems fit he is satisfied that the applicant union is entitled to registration under section 13 and to displace the existing union under section 14, he shall register it in the place of the existing Union. (See section 16.)

Cancellation of Registration:—Cf. Old law:—Under section 9 of the Bombay Industrial Disputes Act, 1938, the registration was cancelled on the order of the Industrial Court, or if an application was made to the Registrar by the employer or any union, concerned with the industry in which the members of the union whose registration was sought to be cancelled were employed, if after holding such inquiry as he deemed fit, he was satisfied that the Union had not fulfilled the conditions entitling it to registration; or that the registration was under a mistake, misunder-

standing or fraud; or that the membership had fallen below the prescribed minimum; or that the recognition of a recognised union was withdrawn; or that it was not conducted *bona fide* in the interest of employees. Under the present Act a great departure is made in the method and procedure of cancellation as the Registrar is allowed to proceed *suo moto*, without any application from the employer or the union concerned; and two new grounds of cancellation, viz. (i) instigation, aiding or assisting a strike held to be illegal, and (ii) cancellation of registration under the Indian Trade Unions Act, 1926, are added. Cancellation of registration in consequence of its cancellation under the Indian Trade Unions Act, 1926, is only natural as the Union ceases to be an "union" under the definition of an union in the Act. It may be also noted that once the Registrar has registered the union, its registration under this Act cannot be cancelled on the ground that it did not comply with the requisite conditions of registration, unless the Registrar finds that it was registered on the ground of mistake, misrepresentation or fraud.

Cases of Cancellation of registration :—Under section 15 the Registrar is bound to cancel the registration of a union in the following cases :—

(a) if the Industrial Court so directs under section 89 by reason of its finding in any proceeding that (i) registration was due to a mistake, misrepresentation or fraud, or (ii) the union has contravened any of the provisions of the Act;

(b) if, after holding such inquiry as he deems fit, the Registrar is satisfied that (i) registration was due to a mistake, misrepresentation or fraud; or (ii) that the membership has fallen below the requisite minimum under section 13 for a continuous period of three months (excluding the month in which a strike or a closure, which is not illegal under this Act and which involves more than a third of the employees in the industry in the area, has extended to a period exceeding fourteen days in such month), and if at the time of cancellation it is less than such minimum; or (iii) that the Primary Union which is registered has failed to observe any of the conditions of being an Approved Union under section 23; or (iv) that the registered union is not conducted *bona fide* in the interests of the employees but in the interest of employers to the prejudice of the interest of employees; or (v) that it has instigated, aided or assisted the commencement or continuation of a strike which has been held to be illegal; and

(c) if its registration under the Indian Trade Unions Act, 1926, is cancelled.

Thus in case of the order of the Industrial Court under section 89, or when the registration is cancelled under the Indian Trade Unions Act, 1926, the Registrar is bound to cancel the registration, without any inquiry; while in cases of registration having been made under mistake, misrepresentation or fraud, or where the membership has fallen below the prescribed minimum, or where the Primary Union has ceased to comply with any of the conditions of its being an Approved Union, or when the union is not conducted *bona fide* in the interestes of employees, the Registrar shall cancel the registration, if after holding such inquiry as he deems fit, he is satisfied of the reasons for cancellation.

Liability prior to cancellation not relieved:—Under section 18 it is provided that the cancellation of registration of a union shall not relieve the union or any member thereof from any penalty or liability incurred prior to such cancellation.

Application for re-registration:—Under section 17 any union, whose registration has been cancelled on the ground that it was registered under a mistake or on the ground that its membership had fallen below the requisite minimum under section 15 (b) (ii) may *after three months* from the date of cancellation apply with the prescribed fee for re-registration. Such application will be dealt with under sections 13 and 14 as an application for registration. But if the registration is cancelled on grounds other than that of registration under a mistake or the fall in membership, the union shall not be entitled to apply for re-registration, *save with the permission of the Provincial Government*. This clause must be particularly borne in mind by unions which try to instigate, aid or assist the commencement or continuation of a strike held to be illegal under this Act, for once their registration is cancelled on this ground they will not be entitled to re-registration, *save with the permission of the Provincial Government*.

Powers of the Registrar:—Under section 118, which corresponds with section 16 of the Bombay Industrial Disputes Act, 1938, except as regards power of issuing commissions, the Registrar shall have for the purposes of holding inquiry the same powers as are vested in courts in respect of—

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling the production of documents;

(d) issuing commissions for the examination of witnesses; and

(e) such further powers as may be prescribed. (See rules in Appendix I as to the prescribed powers.)

Nature of the inquiry and Appearance of the parties:—Under the Bombay Industrial Disputes Act, 1938, it was in one case contended that the inquiries under sections 8 and 12 for registration (corresponding to section 13 in this Act), were administrative inquiries, and that the employer could come in only at subsequent stages by way of an application for cancellation of registration under sections 9, 10 and 11, which would be a judicial inquiry. It was held that no distinction was made by the legislature between different sorts of inquiries and orders under that chapter; and that any inquiry made by the Registrar was a judicial inquiry for under section 16 (corresponding to section 118 of this Act) he was given the same powers as were vested in Civil Courts for the procedure of conducting such inquiries. Therefore, it was held that the inquiry must be held in the presence of the parties whose interests might be affected by the order of the Registrar; and that if a declaration of a Union as a representative union was made without a notice of inquiry being issued to the employer in the industry concerned, the order was bad in law and could be set aside in appeal (Appeal No. 1 of 1945-F B.). The present Act has however deleted from this Chapter, the section corresponding to section 17 in the Bombay Industrial Disputes Act, 1938, which provided "every employer in the industry concerned and every representative of employees whose interests may be affected shall be entitled to appear at any inquiry made by the Registrar under this Chapter." It has also deleted the words "Any person entitled to appear" from the commencement of section 18 of the Bombay Industrial Disputes Act, 1938, and has substituted the words "Any party to a proceeding before the Registrar" at the commencement of the corresponding section 20 of the present Act. In case of cancellation also the Registrar is to act *suo moto* under this Act, without having any application as required under section 9 of the Bombay Industrial Disputes Act, 1938, and the inquiry to be held is also not obligatory on him as is seen from the words "if after holding such inquiry as he deems fit, if any". The effect of these alterations in the phraseology and the scheme of

the present Act seems to be that the inquiry is only administrative, and the parties are not as of right entitled to appear at such proceedings, and the order of the Registrar would not be vitiated only because no notice was issued to the parties concerned. However, it would look just and fair if the Registrar holds such inquiries in the presence of the parties concerned as he is deemed to exercise judicial powers of a Court in such inquiries.

Appeal to the Industrial Court from the orders of the Registrar:—Under section 18 of the Bombay Industrial Disputes Act, 1938, which is substantially reproduced in section 20 of the present Act, it was held that the marginal note of the section was defective and was not in conformity with the provisions of the section itself, inasmuch as while the marginal note speaks of appeals from orders of Registrar cancelling registration of unions, the section itself provides for appeals against any order passed by the Registrar under this chapter. It was further held that the marginal note could not control the clear provisions of the section itself and any party aggrieved had the right to appeal against the order, notwithstanding the marginal notes (Appeal No. 1 of 1945-F. B.).

This decision holds good under the present Act inasmuch as the defective marginal note is not amended by the Legislature. Any party to a proceeding before the Registrar is entitled to appeal *against any order under this chapter* to the Industrial Court and the Industrial Court may admit it, if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is *contrary to law or is otherwise erroneous*. The period of limitation for such an appeal is 30 days from the date of the order passed by the Registrar ; but the Industrial Court may for sufficient reasons admit an appeal even after the period of limitation. In appeal the Industrial Court may confirm, modify or rescind the order of the Registrar and pass such consequential orders as it may deem fit, a copy whereof shall be sent to the Registrar.

Publication of orders:—Section 21 provides for publication in the prescribed manner of every order passed by the Registrar under section 14, 15 or 16 and every order passed in appeal under section 20, i. e. for all the orders passed under this chapter.

14. On receipt of an application from a union for registration under section 13 and on payment of the fee prescribed, the Registrar, shall, if after holding such inquiry as he deems

Registration of
Unions.

fit, he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under section 12 and issue a certificate of registration in such form as may be prescribed :

Provided —

Firstly, that in any local area there shall not at any time be more than one registered union in respect of the same industry :

Secondly, that in any local area the Registrar shall in respect of an industry register a union fulfilling the conditions necessary for registration as a Representative Union in preference to one not fulfilling the said conditions, and failing such a union a union fulfilling the conditions necessary for registration as a Qualified Union in preference to one not fulfilling such conditions :

Thirdly, that where two or more unions fulfilling the conditions necessary for registration apply for registration in respect of the same industry in any local area, subject to the provisions of the second proviso, the union having the largest membership of employees employed in the industry shall be registered :

Fourthly, that the Registrar shall not register any union if he is satisfied that the application for its registration is not made *bona fide* in the interest of the employees but is made in the interest of the employers to the prejudice of the interest of the employees.

Cf. Old law :—This section corresponds to section 8 of the Bombay Industrial Disputes Act, 1938, and is substantially reproduced with necessary alterations so as to fit it in the scheme of this Act, except for the substitution of the expression "shall, if after holding such inquiry as he deems fit, he comes to the conclusion" etc. for the expression "shall hold such inquiry as he thinks fit and if he is satisfied" etc. (See Commentary under section 13 under the heading of "Registration of Union.")

15. The Registrar shall cancel the registration of
Cancellation of a union —
registration.

(a) if the Industrial Court directs that the registration of such union shall be cancelled;

(b) if after holding such inquiry, if any, as he deems fit, he is satisfied —

(i) that it was registered under mistake, misrepresentation or fraud; or

(ii) that the membership of the union has for a continuous period of three months fallen below the minimum required under section 13 for its registration:

Provided that where a strike or a closure not being an illegal strike or closure under this Act in an industry involving more than a third of the employees in the industry in the area has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of three months.

Provided further that the registration of a union shall not be cancelled under the provisions of this sub-clause unless its membership at the time of the cancellation is less than such minimum; or

(iii) that the registered union being a Primary Union has after registration failed to observe any of the conditions specified in section 23; or

(iv) that the registered union is not being conducted *bona fide* in the interests of employees but in the interests of employers to the prejudice of the interest of employees; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which has been held to be illegal;

(c) if its registration under the Indian Trade Unions Act, 1926, is cancelled.

Cancellation of registration :—(See Commentary under section 13 under this heading. The corresponding sections under the Bombay Industrial Disputes Act, 1938, were sections 9, 10, 11 and 12).

16. (1) If at any time any union (hereinafter in this section referred to as "applicant union") makes an application to the Registrar for being registered in place of the union already registered (hereinafter in this section referred to as "registered union") for an industry, in a local area, on the ground that it has a larger membership of employees employed in such industry the Registrar shall call upon the registered union by a notice in writing to show cause within one month of the receipt of such notice why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

(2) The Registrar shall forward to the Labour Officer a copy of the said application and notice.

(3) If, on the expiry of the period of notice under sub-section (1), after holding such inquiry as he deems fit, the Registrar comes to the conclusion that the applicant union complies with the conditions necessary for registration specified in section 13, and that its membership was during the whole of the period of three months immediately preceding the date of the application under this section larger than the membership of the registered union, he shall subject to the provisions of section 14 register the applicant union in place of the registered union.

(4) Every application made under this section shall be published in the prescribed manner not less than 14 days before the expiry of the period of notice under sub-section (1).

Registration of another union in place of existing registered union :—(See commentary under section 13 under this heading. This section substantially reproduces section 10 of the Bombay Industrial Disputes Act, 1938.)

17. (1) Any union the registration of which has been cancelled on the ground that it was registered under a mistake or on the ground specified in sub-clause (ii) of clause (b) of section 15 may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed, apply for re-registration. The provisions of sections 13 and 14 shall apply in respect of such application.

(2) A union the registration of which has been cancelled on any other ground shall not, save with the permission of the Provincial Government, be entitled to apply for re-registration.

Application for re-registration :—(See commentary under section 13 under this heading. This section corresponds with section 13 of the Bombay Industrial Disputes Act, 1938).

18. Notwithstanding anything contained in any law for the time being in force, the cancellation of the registration of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

Liability of the Members or the union prior to cancellation not relieved :—(See Commentary under section 13 under this heading. This section reproduces section 14 of the Bombay Industrial Disputes Act, 1938).

19. Every registered union shall submit to the Registrar on such dates and in such manner as may be prescribed, periodical returns of its membership.

Duty to submit returns :—(See commentary under section

13 under this heading. This section reproduces section 15 of the Bombay Industrial Disputes Act, 1938.).

20. (1) Any party to a proceeding before the Registrar may within 30 days from the date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court :

Appeal to Industrial Court from order of Registrar cancelling registration.

Provided that the Industrial Court may for sufficient reason admit any appeal made after the expiry of such period.

(2) The Industrial Court may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or otherwise erroneous.

(3) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar.

Appeal against orders of the Registrar :—(See commentary under section 13 under this heading). This section substantially reproduces the provisions contained in section 18 of the Bombay Industrial Disputes Act, 1938, and further provides for grounds of admission of an appeal and for its admission even after the expiry of the period of limitation of 30 days from the date of the order. It may be noted here that section 19 of the Bombay Industrial Disputes Act, 1938, relating to reference by the Registrar to the Industrial Court of any matter arising before him in any proceeding under this Act, is omitted under this Act.

Marginal note is defective :—The marginal note of section 20 is not in conformity with the provisions of the section itself. While the marginal note speaks of appeals from orders of the Registrar cancelling registration of unions, the section itself provides for appeal against any order passed by the Registrar under this Chapter. The marginal note cannot control the clear provisions of the section itself and appeal against any order of the Registrar under this chapter

lies by the party aggrieved notwithstanding the marginal notes.
(Cf. Appeal No. I of 1945-F. B.)

21. Every order passed under section 14, 15 or 16
and every order passed in appeal under section 20 shall be published in the prescribed manner.

Publication of
order.

Publication of order:—(See commentary under section 13 under this heading. This section along with section 16 reproduces section 20 of the Bombay Industrial Disputes Act, 1938.).

22. Subject to the foregoing provisions of this Chapter, a union may in the prescribed manner be registered for an industry for more local areas than one.

Registration of
union for more than
one local area.

Registration of union for more than one local area:—
This provision is newly made under this Act to allow the same union to be registered for more than one local area. (See commentary under section 13 under this heading.).

CHAPTER IV.

Approved Unions.

Introductory:—This chapter is newly enacted. There was no provision for an Approved Union under the scheme of the Bombay Industrial Disputes Act, 1938. Chapter III provides for registration of unions as a Representative Union, Qualified Union or a Primary Union. Approved Union came in that picture only in the case of a Primary Union, which could not be entitled to apply for registration, unless it was an Approved Union.

The Approved Union is an innovation of this Act. This union is invested with substantial advantages as it undertakes a corresponding set of obligations, regarding the regularity of meetings of the Executive Committee, Government audit of their accounts, and the avoidance of resort to strikes so long as means of settlement and conciliation are available. When a small beginning is made in the direction of the formation of a Primary Union, having as its members only fifteen per cent. of the employees in a single undertaking, which gets a place and a function and even a representative character in the new scheme, it is but proper that it

must be one of the Approved Unions. Other two types of registered Unions, *vis.* Representative Union and Qualified Union would not be long prepared to let go the attractive advantages under this Act offered by being placed on the Approved List, including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court.

23. (1) On an application being made in the prescribed form, by a union for being entered in the approved list, the Registrar may after holding such inquiry as he deems fit enter the union in such list if he is satisfied that the union has made rules, that the provisions of the said rules are being duly observed by the union, and that the rules provide that—

(i) its membership subscription shall be not less than four annas per month;

(ii) its executive committee shall meet at intervals of not more than three months;

(iii) all resolutions passed, whether by the executive committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by Government may audit its accounts at least once in each financial year;

(v) every industrial dispute in which a settlement is not reached by conciliation shall be offered to be submitted to arbitration, and that arbitration under Chapter XI shall not be refused by it in any dispute;

(vi) no strike shall be sanctioned or resorted to by it unless all the methods provided by or under this Act for the settlement of an industrial dispute have been exhausted and the majority of its members vote by ballot in favour of such strike :

Provided that the Registrar shall not enter a union in the approved list if he is satisfied that it is not being

conducted *bona fide* in the interest of its members, but to their prejudice.

Explanation :—" Member " for the purposes of clause (vi) means a member of the union for the purposes of the Indian Trade Unions Act, 1926.

(2) The Provincial Government may by notification in the *Official Gazette* direct that in the case of any union or class of unions specified in the notification the membership subscription may, subject to a minimum of two annas per month, be less than four annas.

(3) Notwithstanding anything contained in sub-section (1) there shall not at any time be more than one approved union in respect of any industry in a local area.

(4) Any union complying with the conditions specified in sub-section (1) and having a larger membership in an industry in a local area than an approved union for such industry shall on application in that behalf be entered in the approved list in place of such approved union.

Approved Union :—An approved Union is defined in section 3 (2) as a union on the approved list, which is maintained by the Registrar under section 12.

Conditions for being entered on the approved list :—
The necessary conditions are the following —

- (a) The union must have made rules;
- (b) The rules must be duly observed, and
- (c) In particular, the rules must provide for the matters specifically mentioned in subclauses (i) to (vi) in section 23 (1);
- (d) and the union must be conducted *bona fide* in the interest of its members, and not to their prejudice.

Procedure for entering an union on the approved list :—The union entitled to be placed on the approved list must make an application in the prescribed form to the Registrar. (See Rules in Appendix I as to the form prescribed and see the relevant

form in Appendix I A). The Registrar, may after holding such inquiry as he deems fit, enter the union on the approved list, if he is satisfied that the union has complied with the requisite conditions specified above for being entered on the approved list.

But the Registrar is not to enter more than one union on the approved list in respect of any industry in a local area; so if another union so entitled with a larger membership applies, he shall enter such union in place of the existing approved union on the approved list.

Removal from approved list:—(See commentary under section 24 under this heading.)

Rights of approved unions:—(See commentary under sections 25 and 26 under this heading.)

Appeal against orders of the Registrar:—It may be noted that there is no provision corresponding to section 20 for appeals against the orders of the Registrar under this Chapter to the Industrial Court.

24. The Registrar shall remove a union from the approved list if its registration under the Indian Trade Unions Act, 1926, is cancelled, and may also so remove a union if after holding such inquiry if any as he deems fit, he is satisfied that it—

(i) was entered in the list under mistake, misrepresentation or fraud, or

(ii) has, since being included in the approved list, failed to observe the conditions specified in section 23.

Removal from the approved list:—This section provides for the circumstances in which an approved union may be removed from the approved list. In the case of cancellation of registration under the Indian Trade Unions Act, 1926, the Registrar has no discretion, nor he is to make any inquiry; while in the other two cases of enlistment under mistake, misrepresentation or fraud, and of failure to comply with the conditions specified in section 23, he is to hold such inquiry as he deems fit, and exercise his discretion. It may be also noted that there is no provision corresponding to section 20 for appeals against the orders of the Registrar under this Chapter.

25. Such officers of an approved union as may be authorised by rules made in this behalf by the Provincial Government shall, in such manner and subject to such conditions as may be prescribed, have a right, and shall be permitted by the employer concerned—

(a) to collect sums payable by members to the union on the premises where wages are paid to them;

(b) to put up or cause to be put up a notice board on the premises of the undertakings in which its members are employed and affix or cause to be affixed notices thereon;

(c) for the purpose of the prevention or settlement of an industrial dispute—

(i) to hold discussions on the premises of the undertaking with the employees concerned who are the members of the union;

(ii) to meet and discuss with an employer or any person appointed by him for the purpose the grievances of its members employed in his undertaking;

(iii) to inspect, if necessary, in any undertaking any place where any member of the union is employed.

Rights of an Approved Union: (1) Rights of its Officers:—Section 25 provides for the rights of the authorised officers of an approved union.

It may be noted that the employer concerned is bound to permit the authorised union officials to exercise these rights in such manner and subject to such conditions as may be prescribed. The rights of holding discussions, of meeting the employer to discuss the grievances, and of inspection of any place in the undertaking are limited only to the purpose of prevention or settlement of an industrial dispute and cannot be exercised generally. These rights are available to the members of the union only. If the employer or any person wilfully refuses entry to such officer who has been authorised by the approved union or obstructs him he shall, on conviction, be punishable with fine which may extend to Rs. 500/-

under section 108. (See Rules in Appendix I as to the Officers authorised and for the prescribed conditions for exercise of the rights.)

(2) *Right of the union to have legal aid at Government expense in important proceedings :—*(See section 26.)

26. (1) An approved union entitled to appear —

Legal aid to approved unions at Government expense in important proceedings.

(a) before a Labour Court in a proceeding for determining whether a strike, lock-out or change is illegal, or

(b) before the Industrial Court in a proceeding involving in the opinion of the Court an important question of law or fact,

may apply to the Court for the grant of legal aid at the expense of the Provincial Government.

(2) A copy of every application made under sub-section (1) shall be sent to the Registrar with the least practicable delay.

(3) The Court to which an application is made under sub-section (1) may fix for the hearing of the application a day of which at least three days' clear notice shall be given to the Registrar.

(4) On the day fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses, if any, produced by the union and the Registrar, and may also examine the officers of the union, and shall make a memorandum of the substance of such evidence.

(5) The Court may after considering the evidence adduced under sub-section (4) either grant or refuse the application.

(6) The Provincial Government may in consultation with the Industrial Court prescribe the fees for legal advice to, and appearance on behalf of a union before a Court.

(7) For the purpose of this section, legal aid includes advice to the union and the appearance before a Court of a legal practitioner on behalf of the union.

CHAPTER V

Representatives of Employers and Employees and appearance on their behalf.

27. (1) The Provincial Government may from time to time by notification in the *Official Gazette*—

Recognition of combination of employers as association of employers. (a) recognise any combination of employers in an industry whether incorporated or not as an association of employers for the purposes of this Act, provided that one of the objects of such combination is the regulation of conditions of employment in the industry ;

(b) withdraw any recognition granted under clause (a) :

Provided that no recognition shall be withdrawn unless an opportunity has been given to such association of employers to be heard.

(2) In any proceeding under this Act an association of employers shall be entitled to represent —

(a) any employer who is a member of the association ;

(b) any employer connected with the same industry not being a member of the association, who has intimated in writing to the prescribed authority that he has agreed to be represented by the association in such proceeding ; and any notice or intimation given by or to such association shall be deemed to have been given by or to every employer it is entitled to represent.

(3) Where more employers than one are affected or under any of the provisions of this Act deemed to be affected, and no association of employers is under subsection (2) entitled to represent all of them, the representative determined in the prescribed manner shall be entitled to act as their representative.

*Cf. Old law :—*This section reproduces the provisions of section 3 (3) and section 74 of the Bombay Industrial Disputes

Act, 1938, except for the deletion of the words "conducted or carried on by its members" which qualified the words "the regulation of conditions of employment in the industry." It further provides a new proviso for giving opportunity of hearing before withdrawing any recognition; and entitles the association of employers to represent even non-members who authorise it for such purpose; and if there is no such association, it provides for determination of a representative to act on behalf of the employers. The effect of deletion of words qualifying the object clause is that the object need not be limited to regulation of conditions of employment in the industry, *conducted or carried on by its members only*, but includes even the industry conducted or carried on by non-members.

Association of employers :—Under section 27 a combination of employers becomes an association of employers, if it has as one of its objects the regulation of conditions of employment in the industry, and if it is recognised as such by the Provincial Government to represent the employers in any industry. Such recognition may be withdrawn by the Provincial Government, after giving sufficient opportunity to such association to be heard. Thereafter, the combination not having been recognised by the Provincial Government ceases to be an association of employers under section 3 (5).

Representation of employers, notices and appearance on their behalf :—(1) *When there is an association of employers :—*In any proceeding under this Act, the association of employers shall be entitled to represent (a) any of its members, and (b) even non-members, connected with the same industry, who have intimated in writing to the prescribed authority that they have agreed to be represented by the association of employers in such proceeding. In such a case any notice or intimation given by or to such association of employers shall be deemed to have been given by or to every employer represented by it.

(2) *When there is no association of employers :—*If more employers than one are affected or deemed to be affected under the provisions of this Act, and who have no such association of employers to represent all of them, a representative determined in the prescribed manner by the Provincial Government shall be entitled to act as their representative. (See rules in Appendix I as to the prescribed manner of determining a representative.) Such representative will represent all of them and will, therefore,

be entitled to appear and give or receive notices or intimations on their behalf.

28 (1) Where there is no Representative Union in respect of any industry in any local area, the employees in each undertaking in the industry and in each occupation therein may, in the prescribed manner, elect five persons from among themselves to represent them for the purposes of this Act:

Provided that no such persons shall be elected for any occupation the number of employees in which does not exceed ten.

(2) The persons, if any, elected under sub-section (1) shall function in such manner as may be prescribed.

(3) Within twelve months from the date on which an election under sub-section (1) is held, and within each succeeding twelve months thereafter, a fresh election shall be held:

Provided that any person may be re-elected at any such election.

(4) The employees may in the prescribed manner recall any or all of the persons elected under sub-section (1) or (3).

(5) Vacancies in the number of the persons elected under sub-section (1) or (3) shall be filled by election in the prescribed manner.

29. Any act or decision of the majority of the persons elected under section 28 by any employees shall be deemed to be the act or decision of all the persons so elected by them.

Act or decision of majority to be deemed to be act or decision of all.

30. The following shall be entitled to act in the order of preference specified as the representative of employees in an industry in any local area—

Representative of employees.

(i) a Representative Union for such industry ;

(ii) a Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members ;

(iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned ;

(iv) the Labour Officer if authorised by the employees concerned ;

(v) the persons elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves ;

(vi) the Labour Officer :

Provided—

Firstly, that the persons entitled to act under clause (v) may authorise any Qualified or Primary Union in respect of such industry to act instead of them:

Secondly, that where the Labour Officer is the representative of the employees, he shall not enter into any agreement under section 44 or settlement under section 58 unless the terms of such agreement or settlement, as the case may be, are accepted by them in the prescribed manner:

Thirdly, where in any proceeding the persons entitled to act under clause (v) are more than five, the prescribed number elected from amongst them in the prescribed manner shall be entitled to act instead.

31. Notwithstanding anything contained in this Act,

Certain unions to continue to act for some time as representatives of employees.

a registered or representative union entitled under the Bombay Industrial Disputes Act, 1938, to act as a representative of employees immediately before the application of this Act to the

industry concerned shall continue to be so entitled for a period of six months from the date of its application there-to or until a representative of employees becomes entitled to act as such under section 30, whichever is earlier.

Explanation.—For the purposes of this section the expressions ‘registered union’ and ‘representative union’ have the meanings respectively assigned to them in the Bombay Industrial Disputes Act, 1938.

Representative of employees :—Sections 28–31 deal with the representative of employees.

Old Law :—Under section 29 (3) of the Bombay Industrial Disputes Act, 1938, the “ Representative of employees ” meant (i) a representative union of which some of the employees directly affected were its members; (ii) any other registered union *vis. a* recognised union of which the majority *i.e.* more than fifty per cent. of the employees directly affected by the change were its members; or (iii) in other cases representatives not more than five as might be elected in the prescribed manner by the employees directly affected by the change from amongst themselves; or (iv) in cases where representatives were not elected and in all other cases not falling in the above clauses, the Labour Officer.

The Representative Union had a special place in the scheme of the Act, for in the absence of the growth of sound unions in the Province, it was considered desirable that a twenty five per cent. union would be able to protect the interest of the Labour in a centre where it existed and therefore, it could represent the employees, where even some of the employees directly affected by the change were its members (App. Nos. 33 and 42 of 1941—F.B.).

The definition used the words “ belong to ” which were interpreted as “ are members of ” (App. Nos. 8 and 13 of 1940); and it was also held that it was not necessary that some employees of each occupation directly affected by the change should be the members of such union; and so long as some employees of a particular occupation were members of the Representative Union, the Representative Union became representative of employees not only for the employees of the particular occupation but for all the employees affected by the change (App. No. 12 of 1941). The word “ some ” was interpreted in another decision as a fraction

not of the total number of employees in the industry, but of the total number of employees directly affected by the change (App. No. 63 of 1940).

A Representative Union could act as the representative of employees, if a fraction of the employees directly affected by the change even in some one of the occupation belonged to it (App. No. 12 of 1941). But any other registered union *i.e.* the Recognised Union with a membership between five and twenty five per cent. of the total number of employees employed in the industry, could be a representative of employees only when a majority *i.e.* more than fifty per cent. of the employees directly affected by the change were its members. In determining the representative character of the union, one had got to take the employees directly affected by the change as the unit or basis for computing whether a fraction in case of the Representative Union or more than fifty per cent. in case of a Recognised registered union were its members; and it was not necessary to consider the total number of employees in the industry (App. No. 63 of 1940).

No registered union could act if none of the employees affected by the change was its member, for even a Representative Union required some employees directly affected by the change to be its members. If there was no registered union, the representatives not more than five could be elected in the prescribed manner by the employees directly affected by the change from among themselves as the representative of employees.

If there were no elected representatives nor a registered union, the Labour Officer was to act as the representative of employees in all cases (App. No. 2 of 1940). But the powers of the Labour Officer in this behalf were limited under section 31 and section 38 (5) inasmuch as he could not enter into any agreement or settlement without convening a meeting of the employees concerned in the prescribed manner, and unless a majority of them present at such meeting accepted the terms thereof.

Only a Representative Union or a registered union or the elected representatives or the Labour Officer could act as the representative of employees in this order of preference, and negotiate and appear and give or receive notices on behalf of the employees. A Qualified Union had no right to represent the employees, it could only assist the elected representatives of employees or appear in any proceeding in conciliation, arbitration or before the Industrial Court.

if more than fifty per cent. of the employees directly concerned in or affected by such proceedings were its members. (See section 75 (2) of the Bombay Industrial Disputes Act, 1938.)

Representative of Employees under this Act:—

Analysis:—Representative of employees is defined under section 3 (32) as the representative of employees entitled to act as such under section 30 for an industry in any local area. They are entitled to act as such in the order of preference specified in that section.

Representative Union:—Under this Act the minimum membership of a Representative Union is reduced from twenty five per cent. to only fifteen per cent. and the qualifying period is reduced from six to three months. (See section 13 (1).) The range of its activities is also very much enlarged, for it can act as a representative of employees even on behalf of non-members, as the restricting clause "where some of the employees directly affected by the change belong to i. e. are its members" is deleted from the wording of the definition under section 3 (29) (ii) of the Bombay Industrial Disputes Act, 1938.

Qualified or Primary Union:—Under this Act a Qualified Union with only a five per cent. membership or even the newly created Primary Union with only fifteen per cent. of the employees in a single undertaking is given a place and a function in its scheme. If there is no Representative Union, a Qualified Union, and in its absence a Primary Union, is entitled to registration. Such a registered union can act as the representative of employees in the absence of the Representative Union in the industry in three cases, viz:—

(i) where a majority i. e. more than fifty per cent. of the employees directly affected by the change concerned are its members; and

(ii) even if some employees directly affected by the change are its members or even for non-members, if it is authorised in the prescribed manner in that behalf by the employees concerned, or

(iii) if the elected representatives authorise it to act instead of them (unless the employees concerned have authorised the Labour Officer to act on their behalf, who would have a preferential right).

A Qualified or a Primary Union which is registered for such industry can, therefore, act as the representative of employees as

of right if more than fifty per cent. of the employees directly affected by the change concerned are its members; and if only some or none of the employees directly affected by the change concerned are its members, if it is authorised in that behalf by the employees concerned or by the representatives elected under section 28 to act instead of them. (See Rules in Appendix I as to the manner of authorising the union.)

Labour Officer :—The Labour Officer is entitled to act as the representative of employees in two contingencies, *viz* :—

(i) If there is no registered union to act as the representative of employees, the employees concerned may authorise the Labour Officer to act as their representative; or

(ii) if there is no registered union, nor the elected representatives to act as such, the Labour Officer in the last resort can always act as the representative of employees.

He has, therefore, a preferential right to act even before the elected representatives, if the employees concerned authorise him, otherwise he can act only in the absence of the elected representatives.

(a) *Limitation of powers of Labour Officer as representative of employees :—*The powers of the Labour Officer as such a representative of employees are limited to this extent that he cannot enter into any agreement under section 44 or a settlement under section 58, unless the employees accept the terms thereof in the prescribed manner; provided that under section 44 (1) proviso, the Labour Officer shall not enter into any agreement where the employees, deemed to be affected by the notice of change deemed to be a general notice, are in the opinion of the Provincial Government a majority of the employees in the industry, or where by a notification to that effect by the Provincial Government the whole industry is deemed to be affected. (See Rules in Appendix I as to the manner of acceptance of terms.)

Elected Representatives : (a) Election of representatives : Section 28 provides that if there is no Representative Union in the industry in any local area, the employees in each undertaking and in each occupation in which the number of employees exceeds ten, are to elect in the prescribed manner five persons as their representatives for the purposes of this Act, who will function in the prescribed manner; and any vacancy in their number shall be filled by election in the prescribed manner. (See Rules in Appendix I as to

the period and manner of functioning and filling vacancies and as to the number of representatives and manner of election.) For each undertaking and for each occupation in which more than ten persons are employed, five persons will be elected to represent the employees in such undertaking or the occupation as the case may be. These elected representatives, with any vacancy in their number filled up by election as above will not be entitled to act for more than twelve months from the date on which the election is held, within which a fresh election shall be held to elect such representatives, and at which any person may be re-elected. Under the old law representatives were to be elected afresh for each change, whenever a notice was given by the employer or employees desired to give a notice of change. This substitution of a system of annual election in place of the system of election for a particular change only will provide continuity of representatives and will lead to more responsibility.

(b) *Act or decision of majority deemed to be of all :—* Under section 29 any act or decision of a majority of such elected representatives shall be deemed to be the act or decision of all the persons so elected by them.

(c) *Power to recall any representative :—*The employees under this Act under section 28 (4) are given special powers to assert their complete control on their elected representatives by recalling in the prescribed manner any or all the persons elected by them, either originally or to fill up any vacancy. (See Rules in Appendix I as to the manner of recalling representatives.)

(d) *When they can act as representative of employees :—* When there is no registered union to act, nor the Labour Officer is authorised to act by the employees concerned, the elected representatives under section 28 or if the number of employees in any occupation does not exceed ten, the employees themselves can act as the representative of employees. If more than one undertaking or occupation in an industry are affected by any proceeding, so that in any case where the number of such persons entitled to act is more than five, they shall elect the prescribed number in the prescribed manner to act instead of them. Such elected representatives may themselves act or authorise any Qualified or a Primary Union to act instead of them. (See Rules in Appendix I as to the manner of authorising such union.)

(e) *Whether fresh election for every change necessary? :—*

Under section 3 (29) (iii) of the Bombay Industrial Disputes Act, 1938, the elected representatives of employees were elected from the persons directly affected by the change concerned. They were elected for that particular change and, therefore, once the purpose of the election came to an end, they become *functus officio*. It was, therefore, held that for each occasion when a question of change arose there should be a fresh election of representatives from persons directly affected by such proposed change, whether the originally elected representatives were in service or not. (Reference from the Registrar, dated 7th June 1944 at Bom. Lab. Gaz. Vol. 24, P. 57.) This position has been completely changed by the present Act, which provides, where there is no Representative Union, for five elected representatives for each undertaking and each occupation, whose appointment continues until the fresh election, which shall be held within twelve months; and who are entitled to represent them for the purposes of the Act during the period of their appointment. Under this Act fresh election is not necessary for any new change, but only once within a period of twelve months from the date of the election; and thus annual election of representatives is provided for in lieu of the previous system of representatives for a particular dispute only. This change would not work to the detriment of the employees as under the Act the employees can assert their right to recall any or all of their elected representatives at any time.

(f) *Vacancies :—*It was observed at P. 58 of the Bom. Lab. Gaz. September, 1944, "There is some force in the contention that the representatives must act jointly. Some of the representatives that may have died or left service may have been the most trustworthy and the remaining could hardly be said to be the real representatives of employees." The passage was quoted with approval in Appeal No. 1 of 1946—F.B; where it was observed that the workers appointed the five persons as a body in whom they had confidence as their representatives, and therefore, any vacancy in them must be properly filled up and the remaining representatives could not act as such unless those vacancies were filled up. It was, therefore, held therein that if on account of dismissal of two and discharge of one of the elected representatives, neither they nor the remaining others could act as elected representatives of employees, and the proceedings continued without filling up the vacancies, they were vitiated. This decision holds good under the present Act, which statutorily provides for the filling up of such vacancies under section 24 (5).

(g) *Representatives must be employees* :—It is clear that an employee can act as a representative of the employees only so long as he himself continues to be the "employee" in the undertaking or the occupation, within the meaning of section 3 (13). Any employee, therefore, who is dismissed or discharged for a reason other than the dispute relating to a change in respect of which a notice is given or an application is made under section 42, cannot continue to act in any proceeding after his dismissal or discharge; for a representative of employees must be an employee who continues to be an employee throughout the whole proceeding (Cf. Appeal No. 1 of 1946—F. B.).

Rights of the Representative of Employees:—

(a) *To act on their behalf*—The representative of employees can represent the employees for all purposes of this Act. They can negotiate and enter into any binding agreements or settlements (except that in the case of the Labour Officer he has no power under section 30 proviso (ii) to enter into any agreement or settlement, unless the terms are accepted by the employees in the prescribed manner), give or receive notices or intimations, and do all other acts on behalf of the employees. It may be noted that under section 114 (3) even the representatives of the majority of the employees directly affected or deemed to be affected by a general notice may enter into a binding agreement though they may not be representatives of employees.

(b) *To appear on their behalf* :—The representative of employees can appear in any proceeding under the Act on behalf of the employees, unless the employee wants to appear through any other person as provided under section 33.

(c) *To commence proceedings in the court* :—Under section 55 of the Bombay Industrial Disputes Act, 1938, a representative of employees could apply for declaration of an illegal change, illegal strike or illegal lock-out, but under section 79 (2) no proceedings can be commenced except by the employees concerned or the Labour Officer, and under section 82 no Labour Court can take cognizance of an offence, except on the complaint of the person affected or on a report of the Labour Officer, and so a representative of employees can neither make such application nor file the complaint.

Continuance of representatives under the B. I. D. Act—(a) *Registered unions under the B. I. D. Act continue for some time as representative of employees* :—Section 31 provides

for continuance of the registered unions under the Bombay Industrial Disputes Act, 1938, to act as the representative of employees for a period of six months from the date of the application of this Act to such industry or until a representative of employees becomes entitled to act as such under section 30, whichever is earlier. The Representative Union could so act if some of the employees directly affected by the change were its members, and any other registered union *vis.* the Recognised Union could so act only if a majority of the employees directly affected by the change were its members; but none of them could act if none of the employees affected by the change belonged to it.

(b) *Continuation of representatives of employees other than the Labour Officer under the B. I. D. Act for three months for any proceeding*—Section 122 proviso (e) provides that a Registered Union, or a Representative Union or a Qualified Union or other elected representatives, entitled to act or appear as the representatives of employees under the Bombay Industrial Disputes Act, 1938, shall continue to Act as such in any proceeding under this Act for a period of three months from the date on which this Act comes in force. The Qualified Union could appear in any proceeding in conciliation, arbitration or before the Industrial Court under section 75 (2) of the Bombay Industrial Disputes Act, 1938, if a majority of the employees directly concerned or affected were its members. The combined effect of section 31 and section 122 proviso (e) would be that while a Representative Union or a registered union can act as the representative of employees for six months after the date of application of the Act to the industry concerned or until a representative of employees is entitled to act under section 30, whichever is earlier, the proviso is restricted only to a Qualified union or other elected representatives who have been elected for a particular change, who will continue to so act or appear only for a period of three months after the Act comes in force.

32. (1) A Conciliator may, if he considers it to be necessary for the proper discharge of his functions, permit any individual, whether an employee or not, to appear in any proceeding before him.

Persons who may appear in proceedings.

(2) The provisions of sub-section (1) shall apply so far as may be to a Board, an Arbitrator, a Labour Court and the Industrial Court.

SEC. 33] THE BOMBAY INDUSTRIAL RELATIONS ACT

33. Notwithstanding anything contained in any other provision of this Act, an employee shall be entitled to appear through any person,—

Representation of employees.

- (a) in all proceedings before the Industrial Court;
- (b) in proceedings before a Labour Court for deciding whether a strike, lock-out or change or an order passed by an employer under the standing orders is illegal;
- (c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court or the Industrial Court.

Appearance of Parties :—Sections 32 and 33 deal with the appearance of parties to the various proceedings under this Act.

*Cf. Old law :—*Under the Bombay Industrial Disputes Act, 1938, there were two sections, *vis.* sections 17 and 75, which dealt with the appearance of parties in the proceedings under that Act. Section 17 entitled every employer in the industry concerned and every representative of employees whose interest might be affected to appear at any inquiry held by the Registrar; and section 75 entitled only the representative of employees and a Qualified Union of which the majority of employees directly concerned or affected by the proceeding were its members to appear in all other proceedings, and the employee was not entitled to appear except through the representative of employees, save with the permission of the authority holding such proceeding, although there was no such corresponding restriction on the right of the employer concerned to appear in any such proceeding.

This position has been substantially altered under the present Act. The Qualified Union has now been entitled to be a registered Union, and the section corresponding to section 17 of the Bombay Industrial Disputes Act, 1938, has been deleted, and in place of the words "Save with the permission.....no employee shall be allowed to appear in such proceedings except through the representative of employees" in section 75 (1), the words "A Conciliator

(also a Board, an Arbitrator, a Labour Court and the Industrial Court) may, if he considers it to be necessary.....permit any individual, whether an employee or not, to appear in any proceeding before him " have been substituted in section 32. The effect of these changes, seems to be that now no permission is necessary even for an employee concerned to appear in any proceeding under the Act, and so every party to a proceeding seems to be entitled to appear as of right in any proceeding under the Act, except in the case of administrative inquiries before the Registrar under Chapters II and IV of the Act, as no provision is made in the Act corresponding to section 17 of the Bombay Industrial Disputes Act, 1938, and as the Registrar is specifically excluded from the scope of section 32. All that section 32 implies is that the authorities holding proceedings under the Act (except the Registrar) may permit any individual to appear before them, if it is necessary for a proper discharge of their functions, but it does not in any way limit the inherent right of appearance of the parties themselves.

Representation of Parties: (a) Of Employers:—

Under section 74 (2) of the Bombay Industrial Disputes Act, 1938, an association of employers could represent only a member thereof, while under section 27 in any proceeding under this Act, an association of employers shall be entitled to represent any employer who is a member thereof or any non-member who has intimated to the prescribed authority in writing that he has agreed to be so represented.

(b) Of Employees: —(i) Representative of Employees:—

The representative of employees under section 30 shall be entitled to act as the representative in any proceeding under the Act, unless the employee concerned wants to appear through any other person in cases in which he is entitled to do so under section 33.

This is a great departure from section 75 (1) of the Bombay Industrial Disputes Act, 1938, under which without the permission of the authority holding the proceeding, no employee could be allowed to appear in any proceeding, except through the representative of employees.

(ii) *Labour Officer*—Under section 34 (5) and (6) proviso (a), the Labour Officer shall be entitled to appear in any proceeding under the Act, except where the employees who are parties thereto are represented by a Representative Union. The exception is newly provided, and it did not appear under the corresponding section 25 (4) of the Bombay Industrial Disputes Act, 1938.

CHAPTER VI.

Powers and duties of Labour Officer.

Introductory :—Section 25 of the Bombay Industrial Disputes Act, 1938, provided for the powers and duties of Labour Officers, which were further enlarged in respect of convening meetings on the premises where employees worked by amending it by Bombay Act No. XIX of 1945, published on the 3rd November 1945 in the Bombay Government Gazette. The present Act reproduces those provisions, adding the power of inspection of places in which he is entitled to enter, and providing for reasonable notice only in case of entry or inspection outside working hours. He is also entitled to affix or cause to be affixed notice of meeting at a conspicuous place; and certain additional duties are imposed on him in the interests of Labour. The powers and duties are thus expanded so as to enable him to function more effectively by helping employees, whenever his help is sought for.

34. (1) A Labour Officer shall exercise the powers conferred, and perform the duties imposed on him by or under this Act.

Powers and duties of Labour Officers.

(2) For the purpose of exercising such powers and performing such duties a Labour Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect—

- (a) any place used for the purpose of any industry;
- (b) any place used as the office of any union;
- (c) any premises provided by an employer for the residence of his employees,

and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in or information obtained from any document inspected or called for under sub-section (2) shall, if the person in whose possession the document was so requires, be treated as confidential.

(4) A Labour Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order and may also himself affix or cause to be affixed such notice. The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened:

Provided that during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) A Labour Officer shall be entitled to appear in any proceeding under this Act.

(6) It shall be the duty of the Labour Officer to—

- (a) watch the interests of employees and promote harmonious relations between employers and employees;
- (b) investigate the grievances of employees and represent to employers such grievances and make recommendations to them in consultation with the employees concerned for their redress;
- (c) report to the Provincial Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto;

Provided that the Labour Officer shall not—

- (a) appear in any proceeding in which the employees who are parties thereto are represented by a Representative Union,

- (b) where there is a Representative Union for an industry in a local area, except at the request of the union, act under clause (b) of sub-section (6) in respect of the employees.

Powers of Labour Officer:—

(i) *Convening meeting on premises where workers are employed*:—For any of the purposes of the Act a Labour Officer may, after giving a reasonable notice convene a meeting of the employees on the premises where they are employed, except that during the continuance of a lockout which is not illegal, no meeting shall be convened of the employees affected thereby on such premises without the employer's consent. He may require the employer to affix a written notice of the meeting specifying the date, time, place and the purpose of the meeting and the employees or class of employees affected thereby at such conspicuous place in such premises as he may order, and may himself affix or cause it to be affixed. (See section 34 (4).)

(ii) *Appearance*—A Labour Officer shall be entitled to appear in any proceeding under the Act, except where the employees who are parties to such proceeding are represented by a Representative Union. (See section 34 (5) and (6) proviso (a).)

(iii) *Representative of Employees*:—Where there is no registered union to act as a representative of employees and the employees concerned authorise the Labour Officer or in all cases where there is no other representative of employees, he shall be entitled to act as the representative of employees. But his powers will be limited to the extent that he shall not enter into any agreement or settlement unless the terms thereof are accepted by the employees in the prescribed manner (See section 30 (iv), (vi) and second proviso); provided that under section 44 (1) proviso the Labour Officer shall not enter into any agreement where the employees, affected by the notice of change deemed to be a general notice, are in the opinion of the Provincial Government a majority of employees in the industry; or where by a notification to that effect by the Provincial Government the whole industry is deemed to be affected.

(iv) *Initiation of proceedings in the Labour Court*:—Proceedings before a Labour Court in respect of disputes falling under section 78 (1) A (a) or (c) may be commenced by an application

made by the Labour Officer. (See section 79 (1).) The Labour Court can take cognizance of any offence on a report in writing made by the Labour Officer. (See section 82.)

Duties of Labour Officer :—

(i) *Receiving notices* :—The Labour Officer shall receive the copies of notices required under the various sections of the Act to be sent to him e.g. copy of notice and application under section 16 (2), of notice of change or special notice or intimation under sections 42 and 43; of memorandum of agreement under section 44, of decision of Joint Committee regarding proposed change with particulars thereof under section 51, of special intimation under section 52, of notices of strike or lock-out under sections 97 and 98 and of notice of termination under section 116 (5).⁷

(ii) *Special duties* :—(See section 34 (6).)

(iii) *Duty of not disclosing confidential information* :—Under section 105 a Labour Officer is punishable on a complaint made by the party who gave information or produced the document in any conciliation proceeding, if he wilfully discloses such information or contents of such document in contravention of the provisions of the Act under section 60 (3), (4) and (5).

Rights of the Labour Officer in exercise of his powers and performance of his duties :—A Labour Officer shall be entitled to exercise the powers conferred, and perform the duties imposed on him by the Act. For that purpose he shall have the following rights :—

(a) *Entry and inspection* :—(See section 34 (2).)

(b) *Calling for and inspection of documents* :—(See section 34 (3).)

Any person who obstructs the Labour Officer from carrying out his duties shall on conviction be punishable with fine which may extend to Rs. 500 under section 108.

CHAPTER VII.

Standing Orders.

Introductory :—Standing orders are determinative of the relationship between the employer and his employees with regard to matters in Schedule I. In fact they constitute the contract between the employer and his employees, from which the mutual rights and liabilities, which are legally enforceable, can be gathered.

Section 26 of the Bombay Industrial Disputes Act, 1938, provided for the settlement of standing orders with regard to all industrial matters in Schedule I, by the Commissioner of Labour and for appeals from the orders of the Commissioner of Labour to the Industrial Court. They were not liable to be altered for a period of six months from the date on which they came in operation, except on review under section 27, and after that period the change could be done only by giving a notice of change under section 28 (1) or (2). The standing orders so framed were determinative of the relations between the employer and his employees in the industry or occupation concerned in regard to all industrial matters mentioned in Schedule I under section 26 (8).

Under the present Act section 35 provides for the procedure of settlement of standing orders with regard to all the industrial matters specified in Schedule I by the Commissioner of Labour and for application of model standing orders until such standing orders come into operation. Provisions for appeal to and review by the Industrial Court are made in sections 36 and 37. The standing orders so framed are not liable to be altered for a period of one year from the date of their coming into operation, except in appeal or review; but after the expiry of one year any party may apply for a change to the Commissioner of Labour under section 38 (2), and they will be altered in accordance with the procedure provided in section 39. It may be noted that no notice of change is necessary under this Act for alteration in standing orders, and a quick procedure is provided for such change under this section. Under section 40, though the standing orders or if no such standing orders are framed, the model standing orders, are made determinative of the relationship between the employer and his employees, the Provincial Government may refer or any employee may apply to a Labour Court, in respect of any dispute referred to in section 78 (1) A (a) (i) and (ii), regarding the propriety or legality of an order passed by an employer under the Standing Orders, and

for application or interpretation of any Standing Order. Hitherto under the Bombay Industrial Disputes Act, 1938, the only remedy for an employee against the improper use of a Standing Order, was to give a notice of change and seek conciliation. In the event of its failure, the employee had the only alternative to resort to a strike, which was too expensive to rectify injustice to such an individual employee.

35. (1) Within six weeks from the date of the application of this Act to an industry every employer therein shall submit for approval to the Commissioner of Labour in the prescribed manner draft standing orders regulating the relations between him and his employees with regard to the industrial matters mentioned in Schedule I :

Settlement of Standing Orders by Commissioner of Labour.

Provided that where an undertaking in an industry is started after the application of this Act to such industry, the draft standing orders shall be submitted within six months of the starting of the undertaking.

(2) On receipt of the draft standing orders the Commissioner of Labour shall, after consulting in the prescribed manner the representative of employees and employers and such other interests concerned in the industry and making such inquiry as he deems fit, settle the said standing orders.

(3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar, who shall within fifteen days of their receipt record them in the register kept for the purpose.

(4) Standing orders so settled shall come into operation from the date of their record in the register under sub-section (3).

(5) Until standing orders in respect of an undertaking come into operation under the provisions of sub-section (4), model standing orders, if any, notified in the *Official Gazette* by the Provincial Government in respect of the industry shall apply to such undertaking.

Procedure of settlement of Standing Orders :—*Cf. Old Law :—*This section substantially reproduces the provisions in section 28 (1) to (3) of the Bombay Industrial Disputes Act, 1938, except for the substitution of a period of six weeks instead of two months for submitting the draft and for the proviso and sub-section (5) relating to the model standing orders, which are newly added.

This section makes it obligatory on every employer, in respect of any industry to which this Act has been made applicable, to submit draft standing orders relating to industrial matters in Schedule I within six weeks from the date of such application. But if any undertaking is thereafter started, such draft standing orders shall be submitted within six months of the starting thereof. The Commissioner of Labour shall then after consulting the representatives of the employees and employers and other interests concerned and after such inquiry as he deems fit, settle the standing orders, which shall come into operation on the date of their record in the register by the Registrar to whom a copy would be sent.

(See Rules in Appendix I as to the prescribed manner of submission of draft standing orders and consultation.)

Model Standing Orders :—Under sub-section (5) of this section until the standing orders in respect of an undertaking come into operation, model standing orders, notified in the *Official Gazette* by the Provincial Government, shall apply.

Continuance of Standing Orders framed under the Bombay Industrial Disputes Act, 1938 :—Section 122 proviso (b) provides that any standing order settled under the provisions of the Bombay Industrial Disputes Act, 1938, shall be deemed to have been settled by the appropriate authority under the corresponding provisions of this Act.

The old Standing Orders or the model standing orders will apply under this Act, until new Standing Orders come into operation. (See Standing Orders for details and comments thereon.)

36. (1) Any person aggrieved by any standing orders settled by the Commissioner of Labour under sub-section (2) of section 35 may within thirty days from the date of their coming into operation appeal to the Industrial Court:

Appeal to Industrial Court.

Provided that the Industrial Court may for sufficient cause, admit any appeal after the expiry of the period of thirty days.

(2) On an appeal being filed, the Industrial Court may on the application of any party to such appeal and on such conditions as it may think fit stay the operation of all or any of such standing orders until the appeal is decided.

(3) The Industrial Court in appeal may confirm, modify, add to or rescind all or any of such standing orders.

(4) The Industrial Court shall fix the date on which all or any of the standing orders settled by it under sub-section (3) shall come into operation.

(5) A copy of the orders passed by the Industrial Court under sub-section (3) shall be sent to the Registrar who shall record them in the register referred to in sub-section (3) of section 35.

37. (1) Any person aggrieved by a decision of the Industrial Court under section 36 may within
Review. thirty days from the date of the decision apply to the Industrial Court for a review of the said decision.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party making the application or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-sections (2), (3), (4) and (5) of section 36 shall, so far as may be, apply to proceedings under sub-section (1) in the same manner as they

apply to an appeal against standing orders settled by the Commissioner of Labour under sub-section (2) of section 35.

Appeal or review : *Cf. Old Law* :—Sections 36 and 37 provide for appeal to and review by the Industrial Court and these provisions substantially reproduce similar provisions in section 26 (4) to (7) and in section 27 of the Bombay Industrial Disputes Act, 1938; except that the limitation for appeal is extended from fifteen to thirty days from the date of coming into operation of the standing orders, with a proviso for admission even after that period, and that for review is specified to be thirty days from the date of the decision in appeal by the Industrial Court.

Powers in appeal and review :—The Industrial Court shall have the same powers in appeal as well as in review as regards grant of stay of operation of the standing orders and final decision and fixing the date of operation. But it may be noted that there is no power to admit an application for review after the expiry of thirty days' period of limitation as in the case of an appeal.

The standing orders so finally settled after appeal or review shall be determinative and shall not be altered for a period of one year from the date fixed for their operation. (See sections 38 (1) and 40 (1)).

38. (1) No alteration shall be made for a period of one year from the date of its coming into operation in any standing order settled under any of the foregoing provisions of this Chapter except by the Industrial Court in appeal or review, where such appeal or review lies.

No alteration in standing orders for one year.

(2) Any employer or employee may apply to the Commissioner of Labour for a change in—

- (a) any standing orders settled under sub-section (2) of section 35, which has not been appealed against, or
- (b) any standing order settled in appeal under sub-section (3) of section 36, in respect of which no application for review has been made, or

(c) any standing order settled in review under section 37,

after the expiry of one year from the date of such standing order coming into operation.

39. (1) On receipt of an application under sub-section (2) of section 38 the Commissioner of Labour shall, after giving the other party and opportunity of being heard and after consulting such other interests in the industry as in his opinion are affected, pass such order as he deems fit, and, if the order effects an alteration in any standing order, forward a copy of the standing order as so altered to the Registrar who shall, within fifteen days of its receipt record it in the register referred to in sub-section (3) of section 35. The standing order as so altered shall come into operation from the date of its record in the register.

(2) The provisions of sections 36, 37 and 38 shall, so far as may be, apply to an order passed by the Commissioner of Labour under sub-section (1) in the same manner as they apply to standing orders settled under sub-section (2) of section 35.

Alteration in standing orders:—Cf. Old Law:—Under section 26 (8) of the Bombay Industrial Disputes Act, 1938, no alteration could be made for a period of six months, and thereafter if any change was to be made, it could be done by giving a notice of change under section 28 and by going through the conciliation procedure, unless an agreement was arrived at. Section 38 of this Act provides a period of twelve months during which no alteration shall be made, and thereafter, if a change is to be made it can be done by an application to the Commissioner of Labour under section 39, and no notice of change is now required, so that the desired change can be more speedily effected.

40. (1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, appli-

Standing orders to be determinative.

cable under the provisions of sub-section (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in sub-section (1) the Provincial Government may refer, or an employee may apply in respect of, any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court.

Standing orders how far determinative:—*Cf. Old Law:—*Section 26 (8) of the Bombay Industrial Disputes Act, 1938, is substantially reproduced in sub-section (1) of this section. Sub-section (2), however, provides for the power of the Labour Courts to decide disputes arising out of the operation, application or interpretation of standing orders or industrial matters specified in Schedule III. Therefore, although standing orders or if they have not come into operation the model standing orders are determinative of the relationship between the employer and his employees in relation to all industrial matters specified in Schedule I, the power of the Labour Courts to decide disputes of the nature referred to in section 78 (1) (A) (a), either on the application of the employee concerned or on reference by the Provincial Government, is not affected.

It may be noted that though this section mentions the reference to a Labour Court by the Provincial Government of any dispute of the nature referred to in section 78 (1) (A) (a) and though the Labour Court would have jurisdiction to decide it there is no specific section provided in the Act for such reference, and section 79 (1) on the other hand provides that proceeding in respect of such dispute shall be commenced on an application made by any of the parties to the dispute or by a special application after the decision of the Joint Committee or by the Labour Officer. This omission of the Act requires consideration of the Legislature along with the immaterial omission of the words "of sub-section (1)" after the words "paragraph A".

41. The provisions of the Industrial Employment (Standing Orders) Act, 1945, shall not apply to any industry to which the provisions of this Chapter are applied.

Act XX of 1946 not to apply to certain industries.

Notes:—The Industrial Employment (Standing Orders) Act, 1946, has been recently enacted by the Central Legislature, and as the Provincial Legislature has under this Act made extensive and more comprehensive provisions in that respect, this section is provided to exclude the application of that Act.

CHAPTER VIII.

Changes.

Introductory:—Ordinarily the relationship of master and servant arises out of a contract. But now-a-days the rights and responsibilities existing between the employer and the wage earner, particularly in a factory, when once the relationship has been created, are governed by statute. The Factories Act, 1934, the Workmen's Compensation Act, 1923, The Payment of Wages Act, 1936, The Bombay Industrial Disputes Act, 1938, and this Act and similar legislations clearly confer statutory rights and responsibilities. The Bombay Industrial Disputes Act, 1938, made special provisions for regulating the relationship between the two classes by a rule of mutual adjustment in preference to industrial warfare, by setting up the agencies of standing orders, conciliation and arbitration which are further implemented by the present Act by setting up Joint Committees, Labour Courts and approved unions.

The scheme of the Bombay Industrial Disputes Act, 1938, was that matters in dispute should be placed before a Conciliator so that the Government might have an opportunity of considering his view and endeavouring to get the parties to come to a reasonable arrangement (45 Bom. L. R. 657 in re. Khatau Makanji & Co. v. Deshpande); and that no strike or lock-out should be resorted to until the whole of the machinery of the Act provided for discussion and negotiation has been made use of.

Under the Bombay Industrial Disputes Act, 1938, whenever a change was desired by either party in any standing order, or by the employer in any industrial matter in Schedule II, or by the employee in respect of any industrial matter, even if it did not come under Schedule II, it was obligatory to give a notice of change to the other side in the prescribed form. If both the parties arrived at an agreement in regard to the proposed change within the time as prescribed in section 30 thereof, the agreement was recorded by the Registrar, which remained in force till the time provided for in section 77. When no such agreement was arrived at, the dispute was referred to conciliation under chapter VI thereof.

The experience of the working of the Bombay Industrial Disputes Act, 1938, revealed the necessity of relatively quick decisions of industrial disputes, for delay in the redress of grievances of workers with regard to industrial matters created bitterness and discontent amongst the workers resulting in a serious loss of production and in workers' earnings. To remove such delay this Act has minimised the duration of conciliation proceedings and it has further provided substitutes for the notice of change. The present Act divides industrial matters in three Schedules. Schedule I includes routine matters to be regulated by standing orders. Schedule II contains all important industrial matters with which the employers are mostly concerned. Schedule III contains matters which form subject matter of complaints by employees.

Under this Act change in standing orders relating to industrial matters in Schedule I can be effected by an application to the Commissioner of Labour under section 38 (2); and change by an employee in respect of (i) any order passed by the employer under standing orders; or (ii) any industrial matter arising out of application or interpretation of standing orders; or (iii) an industrial matter specified in the newly enacted Schedule III, can be made by an application to the Labour Court under section 42 (4), if the employer approached in the prescribed manner has failed to agree to such change in the prescribed period. Notice of change in the prescribed form is obligatory only in respect of any change by the employer in any industrial matter specified in Schedule II and by the employee in any industrial matter not specified in Schedule I or III. If the parties arrive at an agreement by negotiations within a week of the notice of change under section 42 or when the notice is deemed to be general under section 43, the agreement will be recorded. It will remain in force until the time specified in section 116 (1). When no such agreement is arrived at within a week of the notice, the dispute will be referred to conciliation under Chapter X. Another effective substitute for the notice of change is provided by the device of formation of Joint Committees in Chapter IX of this Act, wherein a proposal for a change other than in any standing order can be moved. If the employer and the registered union arrive at an agreement, it will be recorded as above, and will remain in force until the time specified in section 116 (1). If no such agreement is arrived at, the parties may send a special intimation under section 52 (2) to the Conciliator for the industry for the local area and initiate conciliation proceedings, or in the alternative apply to the

Labour Court under section 52 (3) for a settlement of the dispute, within a week of the decision by the Joint Committee. (See Chapter IX Joint Committees.)

42. (1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) An employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If, at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, he shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

(4) Any employee desiring a change in respect of (i) any order passed by his employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court:

Provided that no such application shall lie unless the employee has in the prescribed manner approached his employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

CHANGES:—

(1) **Nature of Change:—**Section 3 (8) defines "change" as "an alteration in an industrial matter". When the alteration, therefore, does not relate to an industrial matter, there would be no change. If there be any departure from normality in respect of the terms and conditions of employment, then it would be a change technically so called; but acting in consonance with usage will not be a change (App. No. 50 of 1941—F.B.). Also the change contemplated by this section is one, which, if not agreed to, would lead to an industrial dispute. The view necessarily postulates that change must be one which the other party could be compelled to accept, or which would affect its condition adversely (App. No. 4 of 1940—F.B.; App. No. 87 of 1944—F.B.).

(a) *Grant of increase in wages:—*The grant of an increase in wages is not a change of this nature because even if this change was not agreeable to the employees, it was not incumbent on them to accept the increased wages (App. No. 4 of 1940—F.B.; App. No. 158 of 1943).

(b) *Grant of Bonus with conditions:—*Bonus being an *ex-gratia* payment, grant thereof to the entire class of workers without any discrimination, subject to any condition whatever, (e.g. to be paid only to the persons continuing on the muster roll till the day of payment,) cannot be a circumstance affecting adversely the condition of employees (App. No. 87 of 1944—F.B.). In that case the change was held to be not likely to lead to an industrial dispute, and hence the question whether bonus formed

a part of wages or not was left open. Therefore, although it forms a part of wages under this Act, the decision seems to hold good under this Act as well.

(2) Procedure to be resorted to for various kinds of changes :—

(a) Changes in standing orders by application to Commissioner of Labour :—Under section 38 no alteration shall be made in any standing order for a period of one year from the date of its coming into operation. After the expiry of such period, either party may apply for a change to the Commissioner of Labour, who shall after giving the other party an opportunity to be heard and after consulting such other interests in the industry as in his opinion are affected, pass such order as he deems fit in relation to such change. Such order would be final, subject to the provisions of appeal and review by the Industrial Court. (See commentary under sections 38–39.)

(b) Change desired by an employee in certain matters by an application to the Labour Court :—Under sub-section (4) of this section, if an employee desires a change in respect of (i) any order passed by his employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, he shall approach in the prescribed manner his employer with a request for such change; and if no agreement is arrived at within the prescribed period, he shall apply to the Labour Court within three months of his last approach to the employer. (See Rules in Appendix I as to the manner of approach and the period prescribed.)

The Labour Court has under section 78 (1) (A) (a) powers to decide such disputes and under section 78 (1) (C) further powers to require any employer to carry out such change or withdraw an illegal change. (See commentary under sections 78 and 79 as to the procedure and limitation for such applications.) Also under section 47 the employer is bound to carry out a change or withdraw an illegal change within such time as required by the order of the Labour Court or the Industrial Court, or if no time is prescribed within forty-eight hours of the decision or order of such court; failing which he would be penalised under section 105.

The trend of the decisions of the Industrial Court under the Bombay Industrial Disputes Act, 1928, was that it was not open to the

court to sit in appeal against the orders passed by the manager, or to go into the question of sufficiency or otherwise of the reason for punishment and to determine whether it was valid or invalid, good or bad, true or untrue, etc.;, for to do so would be to question the discretion of the manager; and all that the court had to see was whether the procedure prescribed in the standing orders was fulfilled or not (App. Nos. 142, 148 and 195 of 1943; App. No. 145 of 1943; App. Nos. 146, 154, 155 of 1943 and 8 of 1944). Under this section the employee can question the propriety of such discretionary orders and compel the employer to withdraw the illegal change and reinstate him.

The workers are, therefore, not only saved from the delay of the conciliation proceedings, but are assured of a quick redress of their complaints by getting the desired change effected or undesired change withdrawn.

(c) *Change by an employer or employee by means of a notice of change* :—Under sub-section (1) of this section any employer intending to effect a change in any matter in Schedule II shall give a notice of change in the prescribed form to the representative of employees; and under sub-section (2) any employee desiring a change in respect of any industrial matter not specified in Schedule I or III shall give such notice of change to the employer through the representative of employees. (See Rules in Appendix I for the form and persons prescribed and see the relevant forms in Appendix I A.)

(d) *Change other than a change in a standing Order may be proposed in the Joint Committee* :—Under section 51 (1) any member of the Joint Committee for an undertaking or an occupation, may move a proposal for a change, other than a change in any standing order. If an agreement is arrived at, it would be recorded as an agreement under section 44 (1), but if no agreement is arrived at, either party would be entitled, within seven days of the receipt of the decision, to initiate conciliation proceedings by special intimation under section 52 (2) or may apply to the Labour Court under section 52 (3) for a settlement of such dispute.

NOTICE OF CHANGE

(i) *When obligatory* : (a) *On employer* :—An employer shall give a notice of change if the change relates to an industrial matter in Schedule II, and is of such a nature as to lead to an industrial dispute or to affect adversely the condition of em-

ployees. If the change is not of such a nature, *e.g.* grant of increase in wages, which the employees were not bound to accept, or if the change relates to any other industrial matter, not specified in Schedule II, *e.g.* matters in Schedule III or any non-industrial matter, no notice of change is necessary, and the employer can effect such a change without going through conciliatory procedure. For change in industrial matters in Schedule I, a special procedure of alteration in standing orders under sections 38 and 39 is provided.

Change in hours of work :—An amendment was introduced in the Bombay Industrial Disputes Act, 1938, to the effect that a change, the effecting of which had become lawful for the purposes of the Factories Act, 1934, by reason of the notification issued under section 8 thereof, would not be a change within the meaning of section 28 and section 73 (relating to illegal change) of the Bombay Industrial Disputes Act, 1938. In view of this amendment it was permissible for mills to work more than 54 hours a week, without giving any notice of change (App. No. 39 of 1942; App. No. 23 of 1943).

This exception clause is deleted from this Act. Such a change can now be effected only after a notice of change and after resorting to conciliatory procedure. Also by the Amending Act III of 1946, the hours of work have been again reduced to 48 hours a week from 1-8-46.

(b) **On employee:—**An employee desiring a change shall give a notice of change, if it relates to an industrial matter not specified in Schedule I or III, and is of such a nature as to lead to an industrial dispute. No notice of change is necessary, if the change is not of this nature or if it relates to a non-industrial matter, or to any industrial matter specified in Schedule I or III. Such changes can be effected without giving a notice of change and without going through a conciliatory procedure. For industrial matters specified in Schedule I, a special substitute by way of an application to the Commissioner of Labour for alteration of standing orders under sections 38 and 39 is provided; and for industrial matters specified in Schedule III or arising from any order passed by the employer under standing orders or out of application or interpretation of standing orders, the substitute of application to the Labour Court under sub-section 42 (4) is provided.

(ii) **Form of notice of change:—**A letter written but not in the form prescribed is not a statutory notice, and therefore,

strike resorted to without giving such prescribed notice would be illegal (App. No. 26 of 1942). (See Rules in Appendix I relating to the forms prescribed and for relevant forms see Appendix I A.)

(iii) **By or to whom to be given :—**The employer shall give a notice of change to the representative of employees and the employee shall give a notice of change to the employer through the representative of employees. (See section 42 (1) and (2).)

Effect of notice by an unauthorised union :—If there is no evidence to show that an union was authorised to act as an agent on behalf of the employees, then even if it be taken, however, that the employees went on strike in response to the appeal made by the union, the letter to the employers' association by such union is not on behalf of the employees and is, therefore, not binding on the employees. nor the strike that follows is necessarily in consequence of the letter (App. No. 3 of 1940-F. B.).

(iv) **Notice and subsequent negotiations :—**Negotiations subsequent to a notice of change, even though in writing, do not limit the question before the conciliation proceedings thereto to the subsequent demand. In one case the notice of change demanded a change in the scale of wages so as to completely neutralise the rise in the cost of living. Thereafter, the union sent a letter suggesting as a basis of negotiations a certain method of such neutralisation, viz. the supply by the mills of some commodities at pre-war prices and for the rest a certain allowance. It was held that it did not limit the question before the conciliation to the latter demand; and therefore, the question before the conciliator was not really the exact percentage which the union demanded subsequently by way of rise in wages, but what change was necessary in their wages to neutralise the effect of the rise in the cost of living (App. No. 3 of 1940-F. B.).

(v) **Interpretation of notice of change :—**If the notice of change stated that the mills wanted to reduce the number of employees according to seniority, it merely stated what was the "desired change" and it did not amount to a binding agreement between the parties that only senior persons were to be selected. Therefore, non-appointment of applicants, though alleged to be more senior in service, did not amount to an illegal change (App. No. 26 of 1944).

(vi) **Fresh notice of change: Cf. Old Law :—**In section 28 (3) of the Bombay Industrial Disputes Act, 1938, the

expression "After conciliation proceedings have been completed" was used at its commencement, but it was held that this sub-section applied only to a case "where no settlement is arrived at in any conciliation proceeding." If a settlement was arrived at, the case was governed by section 77 (1), and the party desiring to effect a change affecting the terms thereof by its unilateral act had to give a notice of termination; for until that settlement remained in force, even if a fresh notice of change was given, the parties could not enforce the change by resorting to a strike or a lock-out, on failure of the conciliation proceedings arising therefrom (App. No. 81 of 1944—F.B.). This ambiguity is removed by the present Act by clear words to that effect.

Where no settlement is arrived at :—Under the scheme of the Act it is open to the employer to declare a lock-out or to effect any change, and to the employees to resort to a strike within two months after the completion of the conciliation proceedings. If the employees start the conciliation proceedings, it is not necessary for the employer to give a fresh notice of change in the same proceedings in declaring a lock-out; and if the employer starts the conciliation proceedings, it is not necessary for the employees to give a separate notice of change of their own with regard to the same change or a change similar in all material particulars if they want to go on a strike (App. No. 110 of 1945—followed in App. No. 131 of 1945). In such a case any party shall have to give a fresh notice of change with reference to the same change or a change similar in all material particulars, only after the expiry of two months from the date of completion of conciliation proceedings. (See section 42(3).) In such a case if no time-limit is fixed at all, and where there is no mutual agreement or order of the Provincial Government extending the time, the conciliation proceedings would be deemed to be completed under section 63, at the expiry of one month or when the report of the Conciliator or the Board is published by the Provincial Government or when the parties agree in writing to submit the dispute to arbitration, whichever is earlier. Even if the Conciliator's report is published after the period of one month is over, the conciliation proceedings will be deemed to have come to an end at the expiry of one month in the absence of the words "whichever is later" (Cf. App. No. 43 of 1946).

Where settlement is arrived at :—Where the conciliation proceedings result in a settlement, the case is governed by section 116. Even during the time such settlement remains in force, both

parties may supersede it by another agreement or settlement under section 116 (2). But if one party intends to have a change effected by its unilateral act, it must give a notice of termination under section 116 (1). This is because so long as such settlement subsists and is not terminated, even if the party gives a fresh notice of change and resorts to conciliation proceedings, it cannot on failure of such proceedings enforce the same or a similar change by resorting to a strike or a lock-out. (App. No. 81 of 1944—F.B.). But if the change proposed to be effected is a different one, it can be effected or enforced by a strike or a lock-out. Therefore, if during subsistence of a settlement relating to scale of wages, the employees propose a change about wage rates in new conciliation proceedings relating to hours of work started by the employer, and they do not take part in the new conciliation proceedings if the question about wage rates was not taken up; the new conciliation proceedings are not invalid, and if after failure thereof within two months the employer effects the proposed new change in hours of work, there is no illegal change (App. No. 6 of 1945).

43. (1) Where an employer gives notice of a proposed change under sub-section (1) of section 42 affecting some of the employees in an industry in a local area, the representative of any employees engaged in the industry in the area may, within seven days from the date of service of such notice, intimate in writing to such employer that the employees mentioned in such intimation, are affected by such change.

Notice of change
when to be deemed
general notice.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 42 affecting one or some of the employers in an industry in a local area, any employer or an association of employers engaged in the industry in the local area may within seven days from the date of service of such notice, give a special notice in writing to the representative of employees entitled to represent such employee that other employers engaged in the industry in the area and mentioned in such special notice, are affected by such change. The employer or employers concerned shall affix a copy of such special notice at a conspicuous

place on every premises where the employees concerned are employed for work.

(3) A copy of every intimation under sub-section (1) and special notice under sub-section (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(4) On an intimation being given under sub-section (1) or a special notice being given under sub-section (2) and the provisions of sub-section (3) being complied with, the employees mentioned in the intimation or employers mentioned in the special notice, as the case may be, shall also, for the purposes of this Act, be deemed to be affected by such change, and to have been given notice under sub-section (1) or (2), as the case may be, of section 42.

(5) Where an employer or an employee gives a notice of a proposed change under sub-section (1) or sub-section (2), as the case may be, of section 42, and such change, in the opinion of the Provincial Government affects the majority of employers or employees engaged in an industry or occupation in the local area, the Provincial Government may by notification in the *Official Gazette* declare that the whole of such industry or occupation, as the case may be, is affected by such change and thereupon it shall be deemed to be so affected.

Notice of change when to be deemed general notice : *Cf. Old Law* :—Section 43 of this Act reproduces the provisions in section 29 of the Bombay Industrial Disputes Act, 1938, except that it requires compliance with the provision of sending copies as a condition precedent, and empowers the Provincial Government to declare that the whole industry or occupation is affected by the change.

A notice of change will be deemed to be general, if (1) the representative of employees gives a written intimation to the

employer giving notice of change, that the employees mentioned therein are affected; or (ii) if any employer or the association of employers gives a special written notice to the representative of employees giving notice of change, that other employers engaged in the industry and mentioned in such notice are affected, and in both these cases requisite copies are sent as prescribed; or (iii) if in the opinion of the Provincial Government such change affects the majority of employers or employees engaged in the industry or an occupation in any area, and it declares by notification in the *Official Gazette*, that the whole of such industry or occupation is affected by such change.

In such cases the employees mentioned in the intimation, or the employers mentioned in the special notice, or the whole of the industry or occupation declared to be affected by the Provincial Government shall also be deemed to be affected by such change.

Procedure for giving intimation or special notice :—

Such intimation or special notice shall be given in writing within seven days of the service of the notice of change, and copies thereof shall be sent to the Commissioner of Labour, the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. (See Rules in Appendix I as to the person prescribed.) An additional copy is required to be sent to the Commissioner of Labour, which was not necessary in case of the original notice of change. These provisions as to sending copies must be complied with before the notice can be deemed to be general. In case of a special notice the employer or employers concerned shall affix a copy thereof at a conspicuous place on every premises where the employees concerned are employed for work.

When Labour Officer entitled to receive intimation or special notice :—When there is no registered union entitled to act as the representative of employees, or when five representatives are not elected in the prescribed manner, it is not obligatory on the employers to ask the employees directly affected by the change to elect such representatives for the purpose of receiving the special notice, for in such cases the Government Labour Officer becomes the representative of employees, and he is entitled to receive the intimation. It was held under the Bombay Industrial Disputes Act, 1938, that the fact that the intimation (special notice under this Act) was received by the Labour Officer under section 29 (3) and not under section 29 (2) does not invalidate the intimation, when

the Labour Officer alone can represent the employees under the Act (App. No. 2 of 1940). But in view of the insertion of the words "and the provisions of sub-section (3) being complied with" in section 43 (4) of this Act, it seems that such compliance cannot be excused, and the decision on that point would not hold good under this Act.

44. (1) If within seven days from the date of service of a notice under section 42 or an intimation or special notice under section 43 or the date of publication of a notification under sub-section (5) of section 43, or within such further period as may be mutually fixed by the employers affected and the representative of the employees affected an agreement is arrived at in regard to the proposed change, a memorandum of such agreement signed by the employer or employers as well as by the representative of employees shall be forwarded in the prescribed manner to the Chief Conciliator, the Registrar and the Labour Officer :

Agreement regarding change.

Provided that where the employees deemed to be affected under sub-section (4) of section 43 are in the opinion of the Provincial Government the majority of the employees in the industry, or the whole industry is deemed to be affected under sub-section (5) thereof, the Labour Officer shall not enter into any agreement under this sub-section.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on inquiry he is satisfied that the agreement was in contravention of any of the provisions of this Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.

(3) An appeal shall lie to the Industrial Court against an order of the Registrar refusing to register an agreement under sub-section (2). The provisions of section 20 shall apply to such appeal.

45. An agreement registered under section 44 shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar.

Agreement to come into force.

*Cf. Old Law :—*These sections reproduce the provisions in sections 30 and 32 of the Bombay Industrial Disputes Act, 1938, except that it provides the limit of seven days from the date of notice of change instead of fifteen days, and that the period for such discussion may be further extended by agreement; it also puts limitation on the powers of the Labour Officer to enter into certain agreements; entitles the Registrar to refuse registration if it contravenes any of the provisions of the Act and provides for appeal against the order refusing to register such agreement.

AGREEMENT REGARDING CHANGE

This section provides the limit of seven days from the date of notice of change; or from the date of intimation or special notice or publication of notification so as to make it a general notice, for discussion of matters covered by notices of a proposed change given under sections 42 and 43 respectively. If the employers affected and the representative of the employees affected succeed in reaching an agreement, a memorandum of such agreement shall be signed by the employer or employers as well as by the representative of employees, and copies of it shall be sent in the prescribed manner to the Chief Conciliator, the Registrar and the Labour Officer. (See Rules in Appendix I as to the manner of forwarding the agreement.) On receipt of such memorandum the Registrar has to register it; and it shall come into operation on the date specified or if no date is specified on its being recorded by the Registrar.

(a) **Limitation on powers of Labour Officer:—**Under section 30 second proviso, when the Labour Officer is the representative of employees, he shall not enter into any agreement under this section, unless the terms thereof are accepted by them in the prescribed manner. But this power is further limited under proviso to section 44 (1) to the extent that he shall not enter into any agreement, where the employees deemed to be affected on account of a notice deemed to be general under section 43, are in the opinion of the Provincial Government the majority of the employees in the industry or the whole industry is deemed to be so affected on account of the notification issued by the Provincial Government.

(b) Registrar's powers of registering the agreement:

Scope of the inquiry:—Under the Bombay Industrial Disputes Act, 1938, in a Reference from the Registrar, dated 2nd November, 1944, published in the Bombay Labour Gazette, Vol. 24, p. 301, January, 1945, it was held "In our opinion the Registrar is bound under section 30, sub-section (2) of the Bombay Industrial Disputes Act to register an agreement, unless on an inquiry he is satisfied that the agreement was the result of a mistake, misrepresentation, fraud, undue influence, coercion or threat. The scope of his inquiry is limited to the matters mentioned therein. He cannot travel beyond these matters and he is not entitled to inquire whether any such agreement is contrary to other provisions of the Act except perhaps in technical matters arising out of the submission of the memorandum of agreement itself. It is not open to him to refuse to register an agreement because he thinks that it is against the provisions of other sections of the Act."

In section 44 (2) the words "that the agreement was in contravention of any of the provisions of the Act" are inserted. The Registrar, therefore, is bound to register the agreement in the register provided for the purpose, unless he is satisfied that it was in contravention of any of the provisions of the Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat, in which cases he may refuse to register it.

(c) Agreement must be limited to the terms of the notice of change, if not, it must be modified:—An agreement to be registered must be limited to the terms of the notice of change just as an award made by an arbitrator must be limited to the terms of reference. Therefore, although the power of the Registrar to refuse to register an agreement is limited to the matters mentioned in section 44 (2), the Industrial Court has the power to send back the agreement to the Registrar with a direction to hold an inquiry and to ascertain whether the agreement has or has not been arrived at through some mistake. During such inquiry the terms of the agreement will be suitably modified so as to bring them strictly within the scope of the notice of change, either by the Registrar or by the party (Appeal No. 2 of 1945—F. B.).

(d) Appeal against refusal to register:—If the Registrar refuses to register an agreement under section 44 (2) an appeal shall lie to the Industrial Court under section 44 (3) by the party aggrieved within 30 days from the date of the order passed by the

Registrar, unless it admits the appeal for sufficient reason after the expiry of such period. Such appeal may be admitted, if the Industrial Court on a perusal of its memorandum and the decision appealed against finds that the decision is contrary to law or otherwise erroneous. In such appeal the Industrial Court may confirm, modify or rescind such order, and pass such consequential orders as it thinks fit; a copy whereof shall be sent by the Industrial Court to the Registrar.

(e) **When the agreement comes into operation:**—Under section 45 such agreement shall come into operation on the date specified therein or if no date is specified on its being recorded in the register.

(f) **Duration of the agreement:**—(See commentary under section 116.)

(g) **Agreement on whom binding:**—(See commentary under section 114.)

(h) **Procedure on breach or contravention of the agreement:**—If the management makes a breach of the agreement by not complying with its terms, the employees should apply under section 79 for a declaration of an illegal change asking the Labour Court to require the employer to withdraw such illegal change by complying with the terms of the agreement; but they ought not to go on strike (Cf. App. No. 25 of 1941).

(i) **Contracting out of an agreement:**—(See commentary under the heading "contracting out of an award" under section 46 and section 116.)

46. (1) No employer shall make any change in any standing order settled under Chapter VII without following the procedure prescribed therefor in this Act.

egal change.

(2) No employer shall make any change in any industrial matter mentioned in Schedule II—

(i) within the period provided for in sub-section (1) of section 44 unless an agreement is arrived at;

(ii) where no agreement is arrived at and

registered, before a settlement relating to the dispute comes into operation;

(iii) where no settlement is arrived at, after two months from the date of the completion of the proceedings before the Conciliator ;

(iv) in cases where there is a registered submission or in which the dispute has been referred to arbitration, before the date on which the award comes into operation.

(3) No employer shall make any such change in contravention of the terms of a settlement, award or registered agreement.

(4) Any change made in contravention of the provisions of sub-section (1), (2) or (3) shall be illegal.

(5) Failure to carry out the terms of any settlement, award or registered agreement shall be deemed to be an illegal change.

*Cf. Old Law :—*This section substantially reproduces the provisions contained in section 73 of the Bombay Industrial Disputes Act, 1938, with certain material alterations, which are as follows :—

(i) The exception in favour of changes in hours of work which were made lawful by reason of a notification issued under section 8 of the Factories Act, 1934, has been deleted.

(ii) Instead of the words " change in any industrial matter in regard to which a standing order has been settled ", the words " change in any standing order settled without following the procedure prescribed " are used.

(iii) Instead of the words " before the conciliation proceedings are completed ", two sub-clauses (ii) and (iii) in sub-section (2) are provided to meet with cases where a settlement is arrived at and where no settlement is arrived at.

(iv) Instead of the words " before such decision is given ", the words " before the date on which the award comes into operation " are substituted in sub-clause (iv) in sub-section (2).

(v) Failure to carry out the terms of any settlement, award or registered agreement is expressly stated in sub-section (5) to be an illegal change.

ILLEGAL CHANGES

Nature of change :—

(a) *Change in an industrial matter*:—Change is defined in section 3 (8) as "an alteration in an industrial matter", so any change which does not relate to an industrial matter as defined in section 3 (18) will not amount to a change.

(b) *Change must be likely to lead to an industrial dispute*:—There is another limitation as to the nature of change contemplated by this section, which is implied from the very scheme of the Act itself. This Act is enacted to make provision for settlement of industrial disputes.

It provides an elaborate system of conciliation or arbitration for providing opportunities to settle the disputes, which must be resorted to before effecting any change. This implies that the change must be one which, if not agreed to, would lead to an industrial dispute. The view necessarily postulates that the change contemplated must be one which the employer can compel the employees to accept or which would adversely affect the condition of the employees. Therefore, grant of an increase of wages (App. No. 4 of 1940—F. B.), or of an *ex-gratia* payment (App. No. 158 of 1943, wherein App. No. 4 of 1940—F. B. followed) or of bonus subject to any condition whatsoever (App. No. 87 of 1944—F. B.) cannot amount to a change.

(c) *Change must relate to any industrial matter specified in Schedule I or II*:—This section imposes another limitation on the nature and subject of change. It must be a change in any standing order that has been settled (which means in any industrial matter specified in Schedule I, as standing orders regulate the relations with the employees in all matters specified in Schedule I), or in respect of any industrial matter specified in Schedule II (App. Nos. 10 and 32 of 1941).

Changes when not illegal:—No change which is not of the aforesaid nature or which does not relate to any industrial matter specified in Schedule I or II, would constitute an illegal change, even though it is made without following the procedure laid down therefor.

CHANGES WHEN ILLEGAL

(1) **Change in standing orders without following the procedure of alteration :—**Standing orders are determinative of the relations between the employer and his employees in respect of all the industrial matters specified in Schedule I, including all questions of classes of workers, tickets, leave, discharge, suspension, dismissal, misconduct, shift working, playing off, etc. If the employer desires to effect a change in any of the standing orders which have been settled, he must follow the procedure of submitting an application to the Commissioner of Labour as laid down in sections 38 and 39. If he effects any change without following the procedure of alteration, as laid down in the standing orders, he would be guilty of committing an illegal change under sub-section (1) of this section.

Technical error not construed as a breach of the provision in substance :—

(a) *Mistake in the number of standing order* —A technical error here or there cannot be construed as a breach of the provision in substance. It was held that a mistake in putting the correct number of the standing order cannot be treated as an attempt on the part of the employer to introduce an illegal change (App. Nos. 15 and 16 of 1940; App. Nos. 205 to 207 and 209 to 216 of 1943).

(b) *Failure to mention reason in dismissal order* :—Under standing orders no reasons are required to be given unless the form prescribed so requires. The form prescribed by the Millowners' Association, Bombay, requires reason to be mentioned. But if all the procedure required to be followed has been resorted to, the mere failure to mention the reason can at most be regarded as an irregularity, which does not affect the validity of the dismissal order, and cannot be said to have prejudiced the case of the operative (App. No. 102 of 1944—*contra* App. No. 14 of 1942, where it was held that if the order of dismissal did not contain reasons the dismissal amounted to an illegal change in spite of the fact that the operative was reinstated and his wages were paid in full even for the days he was absent).

Where there is no standing order :—

(a) *Changeover of shifts* :—If there is no provision in standing orders regarding changeover of shifts, the management is entitled to introduce changeover of shifts and transfer of opera-

tives from day-shift to night-shift and *vice versa* after giving a notice of change and on failure of conciliation proceedings (App. No. 43 of 1944—F. B.).

(b) *Appointment of an operative* :—An employee who is a head jobber in the third shift has no right to be appointed as a head jobber in the second shift when the same becomes vacant, even though the third shift is abolished, and therefore, there is no illegal change committed if he is not so appointed (App. No. 4 of 1942).

(d) *Degrading an operative* :—The act of the mill in degrading an employee from the position of a head cut-looker to that of an assistant cut-looker does not amount to an illegal change, if he is given the requisite fourteen days' notice, pay upto the day of notice, the discharge certificate,—all the three as a head cut-looker (App. No. 22 of 1941). If without such discharge and a fresh contract of employment in the lower grade, he is degraded, his remedy is under the Payment of Wages Act, 1936, for an illegal deduction of his wages, and also under this Act for it seems to be an illegal change, as such punishment is in contravention of the standing orders (A. I. R. 1941, Sind 191—198 I. C. 814).

(For decisions of illegal change under Standing Orders—see commentary under the Standing Orders.)

(2) **Change in any industrial matter in Schedule II without following its procedure** :—Sub-section (2) of this section provides that if any change is made by the employer in any industrial matter mentioned in Schedule II, without resorting to the procedure laid down therein, it would amount to an illegal change.

(a) *Items in Schedule II* :—(See the commentary under Schedule II for decisions of illegal change as regards the various items, relating to reduction or increase in the number of employees, rationalisation, shift-working, change in usage, wages, hours of work and rest intervals, etc.)

Stopping of work by the employer when not an illegal change :—Stopping of work for a short time with the intention of not working overtime does not amount to an illegal change, if the work is resumed after a short stoppage (App. No. 23 of 1943).

(b) *Procedure to be followed for such change* :—

(i) *Notice of change* :—If the employer intends to effect a change in any industrial matter in Schedule II, he shall give a

notice of change in the prescribed form to the representative of employees under section 42 (1).

(ii) *Negotiations and agreement* :—After giving the notice of change, he shall not effect such change during a period of seven days from the date of its service or the date when it is deemed to be general under section 43, unless an agreement is arrived at during this period of negotiations.

(iii) *Conciliation and settlement* :—If no agreement is arrived at and registered, the employer shall resort to conciliation proceedings and shall not effect such change before the settlement relating to the dispute comes into operation.

(iv) *Reference to arbitration* :—If the conciliation proceedings result in a failure, the parties may in writing agree by a registered submission to refer the dispute to arbitration, or the dispute may be compulsorily referred to arbitration, in which case the employer shall not effect such change before the date on which the award comes into operation.

(v) *Change within two months of the completion of conciliation* :—If negotiations have failed, and no settlement is arrived at even during conciliation proceedings, and if there is no voluntary or compulsory reference of the dispute to arbitration, there is nothing in the Act which precludes the employer from effecting the desired change within two months thereof, provided the subject-matter of the change is substantially in issue in the conciliation proceedings (App. No. 4 of 1940—F.B.). Under the scheme of the Act it is open to the employer to declare a lock-out or to effect the contemplated change and to the employees to resort to a strike, within two months after the completion of the conciliation proceedings. If the employees start the conciliation proceedings, it is not necessary for the employer to give a fresh notice of change in the same proceedings in declaring a lock-out; and if the employer starts the conciliation proceedings it is not necessary for the employees to give a separate notice of change of their own with regard to the same change or a change similar in all material particulars if they want to go on a strike (App. No. 110 of 1945—followed in No. 131 of 1945).

When conciliation proceedings are deemed to be completed, if no settlement is arrived at :—In such a case under section 63, in the absence of a time limit fixed by any general or special order and if there is no mutual agreement extending such time, concilia-

tion proceedings will be deemed to be completed at the expiry of one month or when the report of the Conciliator or the Board of Conciliation is published by the Provincial Government or when the parties agree in writing by a registered submission to refer the matter to arbitration, whichever is earlier. Even though the Conciliator's report may be published after the period of one month is over, the proceedings will be deemed to have been completed at the expiry of one month since they began in the absence of any general or special order fixing any other period. Therefore, if the change is effected or lock-out is declared within two months after this date of completion of conciliation proceedings without any fresh notice of change, it would not be illegal (App. No. 43 of 1946). The maximum duration of conciliation proceedings under this Act is reduced from two months to one month only.

*Fresh notice of change :—*Where no settlement is arrived at in any conciliation proceeding, no fresh notice of change shall be given with regard to the same change or a change similar in all material particulars before the expiry of two months from the date of completion of conciliation proceedings. If the employees start the conciliation proceedings, it is not necessary for the employer to give a fresh notice of change during that period in the same proceedings in declaring a lock-out; and if the employer starts the conciliation proceedings it is not necessary for the employees to give a fresh notice of change of their own with regard to the same change or a change similar in all material particulars if they want to go on a strike (App. No. 110 of 1945—followed in App. No. 131 of 1945).

But after the expiry of the period of two months from the date of completion of the conciliation proceedings, any party shall have to give a fresh notice of change with respect to the same change or a change similar in all material particulars, and if the change is effected or a strike or a lock-out is resorted to without such fresh notice, it would be held to be illegal.

*Where settlement is arrived at :—*Where settlement is arrived at, no change can be made in contravention of its terms during its subsistence, as provided in sub-section (3) of this section.

(3) Change in contravention of the terms of a settlement, award or registered agreement :—Sub-section (3) of this section provides that no employer shall make any such change in contravention of the terms of a registered agreement, a settlement or an award, otherwise it will be an illegal change.

As long as the agreement, settlement or award remains in force, and has not been terminated by a notice under section 116, any change in contravention thereof will be illegal, and such change cannot be enforced by direct action even after giving a notice of change and on failure of subsequent conciliation proceedings (App. No. 81 of 1944-F. B.). But if during subsistence of a settlement relating to scale of wages, the employees propose a change about wage-rates in new conciliation proceedings started by the company in respect of increase in hours of work, and do not take part in the new conciliation proceedings, if the question of wage-rates was not taken up, the new conciliation proceedings are not invalid, and if within two months after failure thereof the company effects the proposed change about hours of work there is no illegal change, because it is not in contravention of the subsisting settlement (App. No. 6 of 1945). A change in contravention of an agreement is illegal only when it is registered, while whether a settlement or an award is registered or not, any change in contravention of it is illegal.

Deletion of exception clause regarding change in hours of work :—Under section 73 of the Bombay Industrial Disputes Act, 1938, it was provided that if a change is made the effecting of which has become lawful by reason of a notification issued under section 8 of the Factories Act, 1934, it did not amount to an illegal change. It was held that if the Government exempted the mills from an obligation to follow a nine-hours' limit of work, and the mill company continued to work a ten hours' shift, even after the expiry of the period in the registered settlement, after which the mill company had agreed to revert back to a nine hours' shift, such change even in contravention of the terms of the registered settlement would not amount to an illegal change (App. Nos. 38, 47 to 58 of 1945). Under that Act it was permissible for mills to work more than 54 hours a week or to ask the workers to work for more than ten hours a day without giving any notice of change (App. No. 39 of 1942; App. No. 23 of 1943). These decisions are no longer good law under this Act, as this exception clause in favour of such change in hours of work is expressly deleted both from section 42 and this section. The Factories Act, 1934, has also been further amended by Act III of 1946 from 1-8-1946 so as to reduce working hours from 54 a week to 48 hours only.

Such change :—The word "such" in sub-section (3) of this section must refer to the change described in sub-sections (1) and

(2) of this section. Hence unless the change was of such a nature that it was likely to lead to an industrial dispute, and it related to any industrial matter in Schedule I or II (for change in standing order means in matters in Schedule I), it would not amount to an illegal change, even though it might be in contravention of the terms of a settlement, award or registered agreement. (App. Nos. 10 and 32 of 1941). But in view of the newly added sub-section (5) such contravention will amount to a failure to carry out the terms thereof, which is deemed to be an illegal change.

Terms must be definite :—No breach or contravention of the terms of a settlement etc. can be held proved, unless they can be definitely ascertained. The declaration of an illegal change is a penal provision and a party cannot be penalised on the allegations of breach of a condition about which the parties do not seem to have been of one mind. It was held in a case where a settlement provided that dearness allowance would be restored as soon as stocks in excess of "normal stocks" were disposed off, and the mills restarted the night-shift, that unless the parties agreed to attach a definite meaning to the expression "normal stocks", the mill could not be charged with breach of the settlement (App. No. 6 of 1941).

Non-observance of the terms :—

(a) *Retrenchment of a worker, in the muster roll of a different department* :—If there is an agreement that the posts of the bobbin carriers and coolies in the weaving department will not be retrenched, the management is not entitled to retrench a worker of the weft room of the weaving department even if he is shown on the muster roll of the winding department, and such reduction of the posts of coolies in the weft room by one would constitute an illegal change (App. No. 55 of 1941).

(b) *Failure to re-employ when machines restarted* :—If a registered settlement provided that certain doffers shall be reinstated when their machines would restart, it would be an illegal change not to re-employ them even on the ground that their employment was not necessary because the machines were restarted on fine count instead of coarse count (App. No. 1 of 1940).

(c) *Working of old machines* :—If the underlying idea behind an agreement is that the particular preparatory machines were not to be worked in so far as they were feeders to the ring frames, it is open to the management to work them in an indepen-

dent manner without the consent of the elected representatives of the workers. But if some of the old machines are worked in contravention of the agreement, as feeders to the ring frames, it would amount to an illegal change (App. No. 37 of 1941).

(d) *Change-over of shifts* :—If there is an agreement that all workers in the night shift are entitled to go over to the day shift every alternate month, the refusal of the management to send some workers from the night shift to the day shift on the ground that their opposite workers in the day shift could not be made to work during night shift due to defective eye-sight amounts to an illegal change (App. No. 19 of 1942).

(e) *Making of working conditions congenial* :—If an agreement was to the effect that "the management will make every endeavour to make working conditions within the mill precincts as congenial as possible and will introduce such changes as regards humidification, water-supply etc., as it may be possible and feasible to introduce," there is no illegal change committed if all the reasonable steps were taken by the management to give effect to the terms of the settlement; and they could hardly be blamed for not thinking of a device which was suggested to them by the Factory Inspector as a last resort (App. No. 41 of 1943).

Contracting out of an agreement, settlement or an award :—Under section 23 of the Payment of wages Act, 1936, any contract or agreement whereby an employee relinquishes any right conferred by the Act, is null and void in so far as it purports to deprive him of the same. Under this Act, though contracting out of an award is not expressly forbidden, the combined effect of sub-section (3) of this section and section 116 (2) is that although the terms of a registered agreement or a settlement can always be modified by mutual consent of the parties thereto, an award cannot be so modified, and the rights conferred to a party under an award cannot be waived by him. If an employer attempts to do so even with the consent of the other party, such an attempt would not only be a change, but an illegal change within the meaning of sub-section (3) of this section (App. No. 5 of 1942; App. Nos. 33 and 42 of 1941—F.B.; *Vide*—Reference from Registrar dated 2nd November, 1944 at 1945 Bom. Lab Gaz. Vol 24, p. 302). Therefore, non-payment of dearness allowance in terms of an award would be an illegal change, and the defence that by a special agreement the employee had agreed not to claim any dearness allowance must at once fail (App. No. 39 of 1944).

Failure to carry out the terms :—Under the Bombay Industrial Disputes Act, 1938, there was no such express provision to this effect, but it was held that if short payment would constitute an illegal change, it must necessarily follow that non-payment would also constitute an illegal change, for it would be ridiculous to contend that if five rupees were to be paid and if only one anna was paid the action would constitute a change in the terms of an award, but that if nothing was paid there would be no change as such (App. No. 12 of 1941). This Act makes an express provision in sub-section (5) of this section to this effect so as to constitute even failure to carry out the terms of a registered agreement, a settlement or an award, an illegal change. Although ordinarily illegal change can be made by an employer, under sub-section (5) of this section illegal change may also be made by an employee.

Binding nature of the agreement, settlement or award—a condition precedent :—Under sub-section (3) contravention of the terms and under sub-section (5) failure to carry out the terms of a registered agreement, a settlement or an award shall be deemed to be an illegal change. But this implies the existence of a binding agreement, settlement or award.

Award made binding in the absence of the party :—If there is no binding award which the mill company had to carry out, because of the fact that when the submission was made binding on the mill company, it was neither summoned, nor it appeared, nor it was represented at the hearing of the submission, its failure to comply with the terms of the award does not amount to an illegal change (App. No. 17 of 1940—F. B.).

Exclusion of grain allowance in calculation of bonus :—Even if the grain allowance formed part of normal wages, and not of dearness allowance, if there was no binding agreement, settlement or award under which such bonus was given and if it was entirely a gratuitous payment, there would be no question of contravention of any agreement, settlement or award. Non-payment of part of such bonus would not be an illegal change, and the mills would be justified in excluding this allowance in calculating bonus (App. Nos. 62 to 66 of 1945—F. B.).

(See commentary under section 66 for decisions on awards, relating to dearness allowance and bonus.)

Application for an illegal charge :—

(a) *Locus standi to make an application for an illegal charge :—*Under section 79 (1) the application for decision of an

illegal change is required to be made by the employee directly affected or the Labour Officer. Therefore, any person who has ceased to be an "employee" within the meaning of its definition in section 3 (13), on the date on which the application is received by the Court, has no *locus standi* to make such an application (App. Nos. 113 and 114 of 1945).

(i) *Dismissed or discharged employee*:—A person who has been discharged or dismissed for any reason, other than on account of any dispute relating to a desired change in respect of which a notice is given or an application is made under section 42, cannot make an application for an illegal change (App. No. 16 of 1941). Although by the discharge or dismissal there may have been a permanent reduction within the meaning of item (1) of Schedule II, the discharged or dismissed employee cannot complain about any illegal change on the ground of such reduction (App. Nos. 16 and 28 of 1941). Also a discharged employee has no *locus standi* after the discharge to make an application for a declaration that grant of bonus with certain conditions attached to it amounts to an illegal change (App. No. 87 of 1944—F.B.;—wherein App. No. 16 of 1941 is followed).

(b) *Lock-out and illegal change*:—Except when the employees fail to carry out the terms of a settlement, award or registered agreement, no illegal change can be committed by the employees, and therefore, the only kind of application that can be made in case of their cessation of work is for a declaration of an illegal strike. Such declaration would not be granted unless such cessation comes within the definition of a strike within the meaning of section 3 (36). On the other hand as the employers can effect an illegal change and also enforce such change by a lock-out, even though the closure of the undertaking may not come within the definition of a lock-out, an application for an illegal change would be maintainable against the employer, for he has no right to close down the undertaking without a notice of change for any reason not covered by standing orders, permitting playing off or a temporary stoppage or closure. Therefore if the allegation is not of an illegal lock-out but of an illegal change in the application, such declaration will be made unless closure was justified under the standing orders. (App. No. 4 of 1945; App. No 110 of 1945.).

Closure for reasons beyond control or permitted under standing orders:—Where the company purports to play off the employees it has to be ascertained from facts whether the cause for

the temporary termination of the service is beyond the control of the company (App. No. 2 of 1944).

(a) *When closure is justified* :—Closure in the following circumstances has been held to be for reasons beyond the control of the management; viz. :—

(i) for trade reasons in accordance with custom and usage of the industry (App. No. 50 of 1941—F. B.);

(ii) for want of Government orders for the requisitioned looms (App. No. 2 of 1944);

(iii) for want of materials, the supply of which was controlled by the Government (App. No. 16 of 1944; App. Nos. 25 and 26 of 1946);

(iv) for shortage of materials due to reasons beyond control (App. No. 12 of 1946);

(v) for shortage of coal (App. No. 17 of 1944);

(vi) due to riotous and disorderly behaviour of employees (App. No. 4 of 1945);

(vii) due to strike in other inter-dependent departments (App. No. 57 of 1945).

These stoppages were, therefore, not held to amount to any illegal change, and the employees were said to be properly played off.

(b) *When closure is not justified* :—But it has been held that overproduction is not beyond the control of the management, and employees could not be played off on that ground (App. No. 57 of 1940).

(See commentary under standing orders for details of these decisions.)

(c) *Declaration of a number of illegal changes when a number of operatives are affected* :—The circumstance that a plurality of persons may be affected by an offence is not conclusive that more than one offence has been committed. If the operatives desire that the employer should be punished for each individual act affecting each individual operative, it is incumbent on them to secure from the Industrial Court or the Labour Court order or orders that a number of illegal changes corresponding to the number of operatives affected have been made. For under section 59 (a) of the Bombay Industrial Disputes Act, 1938, (section 94 (a) of this Act), the

parties are bound by the order of the Industrial Court when it declares that "It is an illegal change", and it is not open to read a plural when the Court declares it in singular (Criminal Revision App. No. 145 of 1945—per Weston and Bavdekar JJ.).

(d) *Consequent prayer of withdrawal of such illegal change* :—Under section 78 (1) (C) (a) the Labour Court has power to require any employer to withdraw any change which is held by it to be illegal; so this consequential prayer may be sought in the application for a decision of an illegal change.

Under section 47 the employer is bound to withdraw such illegal change within such time as the Labour Court or the Industrial Court prescribes, or where no time is prescribed within forty-eight hours of the decision or order. If the employer fails to do so he incurs penalties under section 106 (2).

(e) *Time to make an application* :—Under section 79 (4) the period of limitation is three months of the making of the illegal change.

Evidence : Burden of Proof as to illegal change :—Under the scheme of the Act, an illegal change involves a criminal liability and therefore, as in all criminal offences, the employee has to prove the allegations of an illegal change by clear and definite evidence and without any reasonable doubt (App. No. 12 of 1942).

(i) *Conditions of work—worsening thereof* :—If the mill company deliberately brought about such conditions of working as to preclude the workers from reaping the full benefits of the terms of the settlement, it would amount to an illegal change. But it is deemed to be an implicit term of the settlement that other conditions of work should remain constant. Therefore, it is only if the employees show that the condition of working have appreciably worsened that they can make out their case (App. No. 218 of 1943—F. B.).

(ii) *Efficiency of a worker* :—Where under the terms of an agreement the management had to take into consideration among other things the efficiency of the operative with particular reference to the requirements of the post to be filled by promotion, it was held that if the agreement was silent as to the test of efficiency, in the absence of any such prescribed test, it should be taken that the management would be the proper judge of the efficiency of the operative; and that, therefore, the statement of the management would be believed in the absence of any evidence to the contrary.

It was further held that such a settlement was vague and that it was difficult to keep an exact record of efficiency of time workers (App. No. 60 of 1941).

Penalty for an illegal change :—Penalty for an illegal change by contravention of any standing order is provided in section 107, and for other illegal changes in section 106 (1). Penalty for an illegal change by an employee, not having been specifically provided, will be under section 109.

(See commentary under sections 106 and 107 and Schedule II items (3) and (5).)

47. An employer required under the terms of any decision or order of a Labour Court or the Industrial Court to carry out a change or withdraw an illegal change, shall comply with such requirement within such time as the Court giving or making the decision or order prescribes and where no time is prescribed by it, within forty-eight hours of the giving or making of the decision or order.

Employer to make change etc. within certain time.

Time for compliance with the order of the Court in relation to any change :—This is a new provision which enables the employees to get the desired change effected, and to compel the employer to withdraw any illegal change, immediately upon the order of the Labour Court or the Industrial Court to that effect. If the employer fails to do so, he incurs penalty under section 106 (2), which extends to three month's imprisonment, or a continuing fine extending to Rs. 5,000/- for every day such contravention continues or with both. He incurs a further liability of paying such compensation, as may be directed under section 106 (3), to any employee directly and adversely effected by the change in issue.

CHAPTER IX.

Joint Committees.

Introductory :—This Act has introduced entirely new provisions for setting up Joint Committees of representatives of employers and employees in various occupations and undertakings in the industry. This is a device for establishing direct and continuous touch between the representatives of employers and employees and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer and employee relations. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption has been recommended by the Royal Commission on Indian Labour.* It helps to bring the two classes together and prevents differences in outlook and interest from hardening into prejudices. It also gives a legitimate sense of dignity to Labour in as much as their representatives get frequent contacts with the employers; and reduces scope of conflicts. Such Joint Committees, therefore, will secure certain desired changes without resorting to the elaborate conciliation procedure; and will provide effective substitutes for the notice of change as intended by the Act.

48. (1) A Joint Committee may be constituted for
Constitution of
Joint Committees. an undertaking or occupation with the consent of the employer and the registered union for the industry for the local area:

Provided that no Joint Committee shall be so constituted in respect of an undertaking or occupation where there is no representative union, unless not less than fifteen per cent. of the employees are members of a registered union.

(2) On application made in this behalf by the employer or the Union to the Registrar, a Joint Committee shall be entered in a list of Joint Committees maintained by him, and thereupon all the provisions of this Act shall apply to the Joint Committee.

* (*Vide* :—Statement of objects and reasons.)

(3) A Joint Committee shall stand dissolved—

- (a) whenever the condition specified in the proviso to sub-section (1) ceases to be complied with;
- (b) on expiry of the period of a three months' notice in that behalf being given by the employer to the union, or by the union to the employer.

49. (1) A Joint Committee shall consist of such number of members as may be prescribed; half the number shall in the prescribed manner be nominated by the union and the other half appointed by the employer concerned.

(2) A chairman shall be appointed in accordance with rules made in this behalf. He shall perform his duties in the prescribed manner.

Joint Committee :—Sections 48 and 49 provide for the constitution and composition of the Joint Committees.

"Joint Committee" is defined in section 3 (20) as a Joint Committee constituted under section 48.

(a) **Kinds of Joint Committees:—**The Act contemplates two kinds of Joint Committees:—(i) for an undertaking and (ii) for an occupation.

(b) **How constituted:—**The requisite condition for the constitution of a Joint Committee, contained in section 48 (1), is that the employer and the registered union for the industry for the local area must consent to its constitution for an undertaking or an occupation. But if such registered union is not a Representative Union for such industry in the local area, such Joint Committee can be constituted if at least fifteen per cent. of the employees are its members. This condition ensures that no Joint Committee will be constituted where the workers are not adequately organised.

(c) **Composition:—**(See section 49 and Rules in Appendix I as to the manner of nomination by the union and appointment of chairman and the manner in which he shall perform his duties.)

(d) *Application to Registrar*:—If the condition for its constitution is fulfilled, on application made in this behalf by the employer or the registered union to the Registrar, a Joint Committee shall be entered in the list of Joint Committees maintained by him; and thereafter all the provisions of the Act relating thereto will apply. (See section 48 (2).)

(e) *When a Joint Committee is dissolved*:—Such Joint Committee shall stand dissolved—

(i) if in case of a registered union other than a Representative Union, the membership of the employees in the undertaking or the occupation falls below the minimum requisite of fifteen per cent; or

(ii) on the expiry of a period of a three months' notice on either side to dissolve such committee. (See section 48 (3).)

50. (1) A representative of the registered union may attend any meeting of the Joint Committee, to advise the members representing the employees.

Proceedings of
Joint Committee.

(2) The proceedings of the Joint Committee shall be conducted in the manner prescribed.

(3) The proceedings shall be recorded in a minute book.

51. (1) Any member of a Joint Committee may move a proposal regarding any change other than a change in any standing order or regarding any other matter affecting the relations between the employer and the employees in the undertaking or occupation, as the case may be, for which the Committee is constituted:

Proposal for
change.

Provided that no such proposal shall be moved for a change in respect of any industrial matter if such change could not for the time being be made under this Act.

(2) The decision of the Joint Committee regarding every change proposed under the provisions of sub-section (1)

together with all necessary particulars regarding such change shall within forty-eight hours be communicated to the registered union and the employer, as well as the Labour Officer and the Commissioner of Labour.

52. (1) Where an agreement is arrived at between the employer and the union regarding any change proposed in the Joint Committee under sub-section (1) of section 51, a memorandum of such agreement signed by them shall be forwarded by the employer in the prescribed manner to the Registrar and the Labour Officer and all the provisions of this Act shall apply to such agreement as they would apply in respect of an agreement under sub-section (1) of section 44.

Special intimation for change and special application to Labour Court.

(2) If within seven days from the receipt of a decision under sub-section (2) of section 51, the employer or the union sends an intimation (hereinafter called special intimation) in the prescribed form to the Conciliator for the industry for the local area stating that the change proposed in the Joint Committee, being a change in respect of a matter not specified in Schedule I or III, or such change with specified alterations, should be made, and that no agreement in respect thereof has been arrived at between the union and the employer, the Conciliator shall forthwith enter the case as an industrial dispute in the register kept under section 55, and the provisions of this Act shall apply to it as if a statement were submitted under section 54.

(3) If within seven days from the receipt of a decision under sub-section (2) of section 51 regarding a matter specified in clause (a) of paragraph A of sub-section (1) of section 78 the employer or union sends a special application in respect of such matter to the Labour Court having jurisdiction, the Labour Court shall forthwith proceed to decide the dispute under the provisions of Chapter XII.

(4) A copy of every special intimation sent under sub-section (2) shall be forwarded to the Chief-Conciliator, the Conciliator for the industry for the local area concerned, the Registrar, the Labour Officer and such other person as may be prescribed.

53. (1) The union may authorise such proportion, (hereinafter called the authorised proportion), not being less than three-fourths of the members representing the employees on the Joint Committee, to accept or reject on its behalf any proposal or class of proposals moved in the Committee.

Decision of respective representatives binding on union and employer.

(2) The employer may authorise a proportion of the members representing him on the Committee to accept or reject on his behalf any proposal or class of proposals moved in the Committee.

(3) For a period of two months after a decision of the Committee, no notice of change under section 42, or special intimation or application under section 52 shall be given or made—

- (a) where the union acts under sub-section (1), by the employees concerned or the union, contrary to the decision of the authorised proportion accepting a proposal in respect of which it is authorised; and
- (b) where the employer acts under sub-section (2), by the employer, contrary to the decision of the authorised proportion of his representatives.

(4) The union whenever it acts under sub-section (1), and the employer whenever he acts under sub-section (2), shall communicate the fact to the Chief Conciliator, the Conciliator for the industry for the local area concerned and the Registrar.

Working of a Joint Committee :—Sections 51 to 53 provide for the working of a Joint Committee.

(a) What proposals may be moved?—Section 51 (1) contemplates two kinds of proposals which may be moved by a member of a Joint Committee, *viz* :—

(i) For a change other than a change in any standing order and which can be made under the Act :—No such proposal can be moved for a change in any standing order, nor if such change could not be made for the time being under this Act *e. g.* because a registered agreement, settlement or award is subsisting under section 116 (1) or because it is made in contravention of the provisions in section 46 (2), during the period of negotiations, or before the completion of conciliation proceedings or after two months after the failure of such conciliation proceedings or before the award comes into operation.

(ii) For any matter affecting relations between the employer and the employees :—The proposal may also be moved regarding any other matter affecting relations between the employer and the employees in the undertaking or the occupation for which such Committee is set up.

Thus the employer and the employees are provided with an alternative procedure for changes, other than in standing orders, which can be made without giving a notice of change under section 42 (1) or (2). By such discussions speedy consideration and disposal of difficulties which arise from day to day in mutual relations will also be secured.

(b) Decision on proposals for a change :—

(i) By whom to be made :—Under section 53 (1) and (2) a decision can be arrived at by the authorised proportion. In such cases the union and the employer so acting through the authorised proportion, are required to communicate the fact to the persons specified in section 53 (4).

(ii) On whom binding :—Such decision, taken by the authorised proportion acting on behalf of the registered union and the employer, binds the respective union and the employer.

(iii) Binding effect of such decision :—Under section 53 (3) if the union has accepted the proposal, the employees concerned and such union cannot give a notice of change under section 42 or initiate conciliation proceedings or move the Labour

Court for a settlement of the dispute under section 52, contrary to such decision accepting the proposal, for a period of two months after such decision.

Similarly, if the employer has taken any decision, whether of acceptance or rejection of the proposals, he cannot for a period of two months after such decision give a notice of change under section 42 or initiate conciliation proceedings or move the Labour Court under section 52 for a settlement of the dispute, contrary to such decision.

(iv) *Communication of the decision* :—The decision of the Joint Committee regarding every proposal of a change shall be communicated under section 51 (2) to the persons specified therein within forty-eight hours.

(v) *Procedure when agreement is arrived at for the proposed change* :—(See section 52 (1).)

(c) *Procedure when no agreement is arrived at for the proposed change* :—

(i) *Resort to conciliation* :—Under section 52 (2) initiation of conciliation proceedings is provided for.

(ii) *Resort to Labour Court* :—Under section 52 (3) an alternative remedy of approaching the Labour Court is provided for.

CHAPTER X

Conciliation Proceedings.

Introductory :—*History of the system of conciliation* :—The Industrial "Strike" as a means to secure redress of grievances and alterations and changes in existing conditions of employment has been the most outstanding feature of the relations between the employers and employed in all the countries in the world and this has been especially so in India since the end of the first war. Most countries in the world have provided comprehensive schemes of Legislation aiming at a peaceful settlement of all trade disputes between the employers and the employed and the prevention of conflicts which result in considerable financial loss not only to the employers and to the employed but also to the community at large. World legislation on this subject varies widely in character, scope and extent and ranges from simple conciliation-either by private arrangement or through permanent conciliators appointed by the State to the compulsory acceptance by both parties of decision or awards given by Industrial Arbitration Tribunals or by Industrial Courts.

In India, the All-India Trade Disputes Act of 1929 provided for the appointment of Courts of Enquiry and Boards of Conciliation, but the procedure in connection with the appointment of these bodies was so cumbrous and inconclusive in character that the Act has rarely been used in India for all the years since it has been on the Statute Book. The Government of Bombay passed, in 1934, the Bombay Trade Disputes Conciliation Act, providing for the appointment of a Labour Officer whose chief duties were to secure the redress of grievances of the work-people employed in the textile industry in the city of Bombay, and for the appointment of the Commissioner of Labour as the Chief Conciliator to bring about the two parties to a trade dispute in this industry together with a view to their reaching an amicable settlement of the dispute. It would have been possible to extend the provisions of that Act to cover the textile industry in other centres or to cover other trades and industries in different centres; but there was nothing in the Act making it obligatory on the parties to a trade dispute to endeavour to obtain a settlement of it by conciliation before resorting to a strike or lock-out.*

So the Bombay Industrial Disputes Act, 1938, was enacted, of which the two essential features were compulsory conciliation and voluntary arbitration. An obligation was imposed upon the employer as well as the employees to go first through conciliation, leaving the option to the parties thereafter to settle the dispute by direct action of strike or lock-out, or by voluntary arbitration. Of course an amendment was thereafter introduced in that Act by insertion of section 49A providing compulsory arbitration of the Industrial Court; and a far reaching provision was made through the Defence of India Rules 81A for compulsory conciliation or arbitration.

This Act substantially reproduces these provisions relating to conciliation and arbitration, but at the same time curtails the maximum duration of conciliation proceedings from four to three months, and provides substitutes for a notice of change to avoid delay in initiating the actual work of conciliation. Large number of minor disputes involving no substantial issues are left to the Labour Courts for an expedient and final disposal; and change in standing orders is left to the Commissioner of Labour for speedy disposal. The Joint Committees would also help settlement of certain disputes without going through the conciliation procedure. Also the

* See the statement of objects and reasons of the Bombay Industrial Disputes Act, 1938.

clause relating to compulsory arbitration has been redrafted to give it a wider scope; and the powers under Rule 81 A of the Defence of India Rules have been continued by the Emergency Provisions (Continuance) Ordinance, 1946.

Strikes or lock-outs will be illegal until the whole machinery provided for by the Act for discussion and negotiations and peaceful settlement has been made use of.

54. (1) If any proposed change in respect of which notice is given under section 42, or an intimation or special notice is given under section 43 is objected to by the employer or the employee, as the case may be, the party who gave such notice, intimation or special notice shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator for the local area for the industry concerned a full statement of the case in the prescribed form within fifteen days from the date of service of such notice, intimation or special notice on the other party or within one week of the expiry of the period fixed by both the parties under sub-section (1) of section 44 for arriving at an agreement.

Report of dispute to be sent to Registrar, Chief Conciliator and Conciliator.

Explanation—For the purposes of this sub-section a change shall be deemed to be objected to by the employer or employee, as the case may be, if within seven days from the date of service of such notice, intimation or special notice or within the period fixed by both the parties under sub-section (1) of section 44 for arriving at an agreement a memorandum of agreement has not been forwarded to the Registrar under the said sub-section.

(2) Where a notification is issued under sub-section (5) of section 43 in respect of such change, any employer or employee in the industry may within seven days from the date of publication of such notification forward such statement to the said officers.

55. On receipt of the statement of the case under section 54 the Conciliator shall, except in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced, forthwith enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such receipt.

Commencement
of conciliation
proceeding.

Cf. Old Law :—Sections 54 and 55 substantially reproduce the provisions contained in sections 34 and 35 of the Bombay Industrial Disputes Act, 1938, except that the period for forwarding the statement of the case is reduced from twenty one days to fifteen days from the date of service of notice or intimation or special notice or a week of the expiry of the period fixed by the parties for arriving at an agreement, and that the change is deemed to be objected if the memorandum of agreement is not forwarded within seven days instead of fifteen days of the service of such notice etc., or the time fixed for arriving at an agreement. Section 64 is provided for cases in which no conciliation proceedings can be commenced.

Commencement of conciliation proceedings :—

(a) *Initiation by full statement under section 54*:—The scheme of the Act for effecting changes by a notice of change is that where the employees are represented by a Representative Union, the conduct of all negotiations is left to the employer and such a Representative Union. If there is no Representative Union, other registered unions or other representatives of employees entitled to act as such under section 30, will conduct the preliminary negotiations on behalf of the employees with their employers. If agreement is arrived at during these negotiations, it will be registered under section 44. But if no such memorandum of agreement is forwarded to the Registrar under section 44 (2), within seven days from the date of service of notice of change or special notice or intimation or within the period fixed by both the parties for arriving at an agreement, such change shall be deemed to have been objected. Thereupon within fifteen days of such notice or intimation or within one week of the expiry of the period fixed for arriving at an agreement the party giving a notice of change shall forward a full statement of the case in the prescribed form to the persons specified in section 54 (1). Conciliation proceedings shall be

deemed to have commenced from the date of receipt of such statement, except in cases specified in section 64 when no conciliation proceedings can be commenced. (See Rules in Appendix I as to the form of statement and see form in Appendix IA.)

If the notice of change is made a general notice by issue of a notification to that effect under section 43 (5), such statement of the case may be forwarded under section 54 (2) as aforesaid, by any employer or employee, within seven days of the publication of such notification.

(b) *Initiation by means of a special intimation under section 52* :—In cases where a change is proposed in a Joint Committee, if no agreement is arrived at between the employer and the registered union, within seven days of the receipt of such decision, either party may send a special intimation under section 52 to the Conciliator for the industry for the local area. Thereupon conciliation proceedings will be deemed to have commenced from the date of the receipt of such special intimation, unless such proceedings cannot be commenced under section 64. (See section 52 (2) and rules in Appendix I as to the prescribed form of special intimation and see the relevant form in Appendix I A.)

When conciliation proceedings shall not be commenced :—The scheme of the Act is of compulsory conciliation, and so generally when the parties fail to reach an agreement, a trade dispute is deemed to have occurred, and the Conciliator will step in and endeavour to bring about a settlement of such dispute. It is natural that these provisions of compulsory conciliation should not be enforced, if the parties otherwise resort to arbitration, as the purpose of a peaceful settlement of the dispute is more effectively served thereby. Section 64 (a), therefore, provides three exceptional cases, when no conciliation proceedings shall be commenced, viz :—

(i) *Submission in force relating to such dispute* :—If the representative of employees directly affected by the dispute is a registered union, which is a party to a submission relating to such dispute or a dispute relating to a similar industrial matter, such dispute is bound to be submitted to arbitration, and the award thereon would be binding to all the persons represented by it and it would be futile to resort to conciliation.

(ii) *Reference made to arbitration* :—If the dispute has been referred to compulsory arbitration by the Provincial Govern-

ment, under section 72 or 73 of the Act, it would be futile to waste time in such conciliation proceedings which would lack finality at their end.

(iii) *Notification under section 114 (2)* :—If the employers and employees concerned are in respect of such dispute bound by a registered agreement, settlement, submission or award, by a notification under section 114 (2) of the Act issued by the Provincial Government, no dispute will remain thereafter for conciliation.

Discontinuance of conciliation proceedings :—As a necessary corollary to section 64 (a) and (b) it follows that the circumstances which barred the initiation of conciliation proceedings should also stop the continuation of such proceedings. Section 64 (b), therefore, provides that conciliation proceedings shall not be continued after the date on which a submission relating to the dispute has been entered into or the dispute has been referred to compulsory arbitration under section 72 or 73, or a direction has been issued under section 114 (2) that the parties will be bound by a particular registered agreement, settlement, submission or award.

Conduct of conciliation proceedings :—(See commentary under sections 56 to 61.)

Time-limit and completion of conciliation proceedings :—(See commentary under sections 62, 63 and 65.)

Settlement on whom binding :—(See commentary under section 114.)

Duration of settlement :—(See commentary under section 116.)

Writ of *Certiorari* or prohibition against a Conciliator :—A Conciliator is not empowered to determine judicially all the rights of the parties, nor he is authorised to make any order which in the slightest degree would affect the rights of the parties or impose any liability on them. He has only to make a report to the Provincial Government, which has in turn merely to publish such report. Because he has to adopt the procedure followed in Courts of Law, that by itself does not make proceedings before him judicial proceedings; and no writ of *certiorari* or prohibition to proceed with conciliation can be issued against a Conciliator. (—per Chagla J. in 45 Bom. L. R. 657. Question left open in appeal. *Khatau Makanji & Co.—v. Deshpande*).

Validity of proceedings held in absence of a defaulting party :—If the employees propose a change about wage-rates in conciliation proceedings started by the company about increase in hours of work, and do not take part therein if the question of wage-rates was not taken up, the conciliation proceedings held in their absence are not invalid, and the company can effect the proposed change on failure thereof (App. No. 6 of 1945).

Compulsory conciliation under Rule 81 A of the Defence of India Rules :—(See commentary under the heading " Compulsory conciliation or arbitration " under sections 71-73.)

56. (1) The Conciliator shall hold the conciliation proceeding in the prescribed manner.

Conciliation proceeding.

(2) It shall be the duty of the Conciliator to endeavour to bring about the settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement or for any other reason.

57. (1) It shall be lawful for the Chief Conciliator to intervene or to direct any Conciliator to intervene at any stage in any conciliation proceeding held by another Conciliator, and thereafter the Chief Conciliator or the Conciliator so directed shall hold the conciliation proceeding with or without the assistance of the Conciliator.

Power of Chief Conciliator to intervene.

(2) The Chief Conciliator may from time to time issue such directions as he deems fit to any Conciliator at any stage of a conciliation proceeding.

58. (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed form by the Conciliator and

Settlement and report.

signed by the employer and the representative of employees. The Conciliator shall send a report of the proceeding along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then publish it in the prescribed manner. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement and where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at:

Provided that where such Conciliator is the Chief Conciliator such report shall be forwarded by him to the Provincial Government.

(3) The Chief Conciliator shall forward the report submitted to him under sub-section (2) to the Provincial Government with such remarks as he deems fit.

(4) The Provincial Government shall publish the report of the Conciliator or Chief Conciliator forwarded to it under the proviso to sub-section (2) or under sub-section (3) except in cases in which the dispute is referred to a Board, or the parties to the dispute enter into a submission in respect of it.

(5) Before the close of the proceeding before him the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to arbitration.

(6) (a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation

proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall be deemed to be a submission within the meaning of section 66.

(b) —Where the agreement provides for arbitration either by a Labour Court or by the Industrial Court, the Conciliator shall forthwith refer the dispute to the Labour Court or the Industrial Court, as the case may be.

59. (1) The Provincial Government may at any time, and where either prior to the commencement of a proceeding before the Conciliator or after his failure to bring about a settlement, the parties agree, shall refer the dispute to a Board and thereupon conciliation proceedings before the Board shall be deemed to have commenced from the date of such reference.

(2) On such reference being made, the Board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in the notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice ~~or~~ on such other date as may be fixed by the Board, the Board shall hold the conciliation proceeding. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial dispute and the provisions of sections 55, 56 and 58 shall, so far as may be, apply to the proceeding before the Board.

60. (1) A Conciliator or a Board, as the case may be, shall, subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) The proceedings before a Conciliator shall be held *in camera* and any proceedings before a Board may be held in public or *in camera* as the Board may decide.

(3) If a party to an industrial dispute or a witness or any other person giving any information or producing any document in a conciliation proceeding makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential:

Provided that the Conciliator or Board may permit the information or the contents of the document to be disclosed to the other party.

(4) Save as provided in sub-section (3), a Conciliator or any member of a Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document in respect of which a request has been made under sub-section (3) without the consent in writing of the party making the request under the said sub-section.

(5) Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

61. A Conciliator or a Board may refer any question of law arising before him or it in any conciliation proceeding, to the Industrial Court for decision. Any order passed by the Conciliator or the Board in such proceeding shall be in accordance with such decision.

Reference to Industrial Court by Conciliator or Board.

Cf. Old Law :—Sections 56 to 60 substantially reproduce similar provisions contained in sections 36 to 40, except for the new provisions made under section 56 (2) relating to the power of the Conciliator to adjourn such proceeding for any other reason; under section 57 (2) relating to the power of the Chief Conciliator to issue directions to the Conciliator; under section 58 (4), (5) and (6) relating to the duty of the Conciliator to ascertain if the parties

are willing to submit the dispute to arbitration, and to give effect to such desire, in which case the report would not be published, and for the substitution of procedure *in camera* even in case of a Board at its discretion. A new provision is also made for reference to the Industrial Court under section 61.

CONDUCT OF CONCILIATION PROCEEDINGS

(a) **Procedure** :—Conciliation proceedings before a Conciliator shall be held in the prescribed manner *in camera*, and before the Board may be held in public or *in camera* as the Board may decide. (See section 56 (1) and section 60 (1) and (2).)

(b) Powers of a Conciliator :—

(i) *Same powers as of the Courts* :—A Conciliator or the Board shall have the same powers as are vested in Courts in respect of matters specified in section 118.

Disclosure of information or contents of documents :— (See section 60 (3), (4) and (5).) Penalty for such disclosure is provided in section 105.

(ii) *Power of reference of a question of law to the Industrial Court* :—Under the newly enacted section 61 a Conciliator or a Board may refer any question of law before him or it in any proceeding to the Industrial Court for decision.

(c) Duties of a Conciliator :—

(i) *To follow the directions and submit to the intervention of the Chief Conciliator* —The Chief Conciliator is empowered under the newly enacted section 57 (2) to issue from time to time such directions as he deems fit to any Conciliator at any stage of a conciliation proceeding. It shall be also lawful for him under sub-section (1) of that section to intervene or direct any other Conciliator to intervene and to hold the conciliation proceeding with or without the assistance of the original Conciliator.

(ii) *To endeavour to settle the dispute* :—It shall be the duty of a Conciliator to endeavour to bring about a settlement of the dispute. (See section 56 (2).) To allow the parties to arrive at a settlement or for any other reason he may adjourn the Conciliation proceedings. But such adjournment shall be deemed to be at his own instance, and so cannot be taken into consideration in extending the time-limit. If the adjournment is by mutual consent of the

parties, such period can be excluded in computing the time-limit under section 62; but in the absence of any notes in the Conciliator's report to that effect, any adjournment granted shall be presumed to be at his own instance and not by the mutual consent of the parties. (Cf. App. No. 43 of 1946.)

(iii) *To draw the memorandum of settlement and report:—*
{ See section 58 (1).}

(iv) *Reference to the arbitration if the parties so desire:—*
At any stage of the proceeding, the parties may enter into a submission under section 58 (6) and thereupon, if the arbitration of a Labour Court or the Industrial Court is agreed upon, the Conciliator shall forthwith refer the dispute to such Court.

(v) *Discontinuance of proceeding:—*Under section 64 (b) no conciliation proceeding shall be continued after the date on which a submission relating to the dispute has been entered into at any stage; or a reference is made under section 72 or 73 by the Provincial Government to compulsory arbitration; or when a direction is issued under section 114 (2) by the Provincial Government to the effect that the parties will be bound by some other registered agreement, settlement, submission or award relating to the dispute. Parties having resorted to arbitration, conciliation proceedings are deemed to have been completed in these cases under section 65.

(vi) *Where no settlement is arrived at:—*

(a) *To ascertain if parties willing to submit the dispute to arbitration:—*Before the close of the proceeding, the Conciliator shall, under the newly enacted provision in section 58 (5), ascertain from the parties whether they are willing to submit the dispute to arbitration.

(b) *Report of failure:—*Where no settlement is arrived at, the Conciliator shall send a full report under section 58 (2) or (3), stating the steps taken to ascertain the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at. Such report shall then be published under section 58 (4) by the Provincial Government, except where the parties have entered into a submission or the dispute is referred to a Board, as in these cases the award or the report of the Board will be published.

(c) *Reference to Board on failure:—*If after failure of conciliation, the parties agree, the Provincial Government shall refer the dispute to a Board of Conciliation under section 59 (1).

(vii) *Reference to Board by the Provincial Government :—*

Under section 59 (1) the Provincial Government may refer the dispute to a Board of Conciliation of its own initiative at any time; but it shall make such reference, if the parties so agree, either before the commencement or before failure of the conciliation proceedings. Thereupon, the proceedings before the Board shall be deemed to have commenced from the date of such reference. On such reference being made the Board shall under section 59 (2) give a notice in the prescribed manner to the parties to the dispute with a copy to the Labour Officer, to appear before it at the time and place specified.

62. (1) The Provincial Government shall by general or special order notified in the *Official Gazette* fix a time limit for the completion of each stage of the conciliation proceedings provided for under this Chapter :

Time limit for stages of conciliation proceeding.

Provided that the total period fixed for the completion of all stages of a conciliation proceeding shall not exceed one month from the date on which the dispute is entered by the Conciliator in the register under section 55 or is referred to a Board under section 59 :

Provided further that the Provincial Government may extend the said period of one month by a further period of a fortnight at a time but not exceeding in any case two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may in any case agree to extend the period fixed for the completion of any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

63. A conciliation proceeding shall be deemed to have been completed—

Completion of conciliation proceeding.

(i) when a memorandum of the settlement arrived at in such proceeding is signed by the parties under sub-section (1) of section 58, or

(ii) when the parties agree in writing to submit the dispute to arbitration, or

(iii) if no settlement is arrived at, when the report of the Conciliator or the Board is published by the Provincial Government, or

(iv) when the time limit fixed for the completion of such proceeding under section 62 has expired.

*Cf. Old Law :—*Section 62 substantially reproduces section 41 of the Bombay Industrial Disputes Act, 1938, except for the substitution of a maximum period of one month instead of two months. Section 63 is also a substantial reproduction of section 42 of the Bombay Industrial Disputes Act, 1938, except for the insertion of the words "is signed by the parties" after the words "when a memorandum of settlement is arrived at in such proceeding" in sub-section (i), and except for the newly enacted sub-section (ii). The effect would be to complete the conciliation proceedings on the date of signature on the memorandum of settlement instead of the date of its recording by the Registrar and if the parties agree in writing to submit the dispute to arbitration, on such date.

Time-limit for stages of conciliation proceedings :—

Under section 62 (1) it is obligatory on the Provincial Government to fix a time-limit for the completion of each stage of conciliation proceedings by a general or special order, notified in the *Official Gazette*, and so it would not be a sufficient compliance with the terms of this mandatory provision, if departmental instructions are given to the Conciliators to finish the proceedings within one month (App. No. 43 of 1946). Such total period fixed for the completion of all stages of a conciliation proceeding shall not exceed one month from the date on which the dispute is entered by the Conciliator in the register under section 55 or is referred to the Board under section 59, i. e. from the date when the conciliation proceedings are deemed to commence before the Conciliator or the Board. But the Provincial Government may by a general or special order extend such period by a further period of a fortnight at a time but not exceeding in any case two months in the aggregate, so that in any case the total period cannot exceed three months from the date of its commencement, except where the parties mutually agree to extend the said

period by any further period, which shall be excluded in computing the time-limit fixed by the statute. (See section 62 and App. No. 43 of 1946.) In the absence of any notes in the Conciliator's report to that effect it will be taken that adjournment, if any, was granted, it must have been at the instance of the Conciliator under section 56 (2) and not by the mutual consent of the parties, so that such period cannot be excluded in computing the time-limit (App. No. 43 of 1946).

Completion of conciliation proceedings :—Section 63 provides that a conciliation proceeding shall be deemed to have been completed—(i) when the settlement is signed, or (ii) a submission is entered into, or (iii) the report of failure of conciliation is published, or (iv) when the time-limit fixed by any general or special order under section 62 expires, or (v) when conciliation proceedings are discontinued under section 64.

In the absence of the words " whichever is latter", this section will be so interpreted that if there is no time-limit fixed either by a general or a special order, and when there is no mutual agreement extending the period, the conciliation proceedings shall be deemed to be completed at the expiry of one month, even though the report of the Conciliator or the Board may be published even after the period of one month is over (Cf. App. No. 43 of 1946). The conciliation proceedings will be deemed to have been completed on the happening of any one of these contingencies, whichever is earlier.

Importance of determination of the date of completion of conciliation proceedings :—The question of completion of conciliation proceedings is very important, for the whole scheme of the Act is to make it obligatory on the parties to go through the conciliation stage first, and thereafter, an option is left to them to settle the dispute by direct action or arbitration. Only after the failure of this compulsory conciliatory machinery, the parties are at liberty within a period of two months to effect the proposed change, or enforce it by resorting to a strike or a lock-out within two months of the completion of such proceedings, unless they have agreed to submit the dispute or the matter has been referred to arbitration. If any change is made or enforced by a strike or a lock-out after the period of two months from the date of completion of conciliation proceedings, such action would be illegal under section 46, 97 or 98.

64. No conciliation proceeding in respect of an industrial dispute shall—
Conciliation proceedings not to be commenced or continued in certain cases.

(a) be commenced if—

- (i) the representative of employees directly affected by the dispute is a registered union which is a party to a submission relating to such dispute or a dispute relating to an industrial matter similar to that regarding which the dispute has arisen;
- (ii) it has been referred to arbitration under the provisions of section 72 or 73;
- (iii) by reason of a direction issued under sub-section (2) of section 114 the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award;

(b) be continued after the date on which—

- (i) a submission relating to such dispute is entered into by the employer and employees concerned under section 58 or 66;
- (ii) the dispute is referred to arbitration under section 72 or 73; or
- (iii) the direction referred to in sub-clause (iii) of clause (a) is issued.

65. A conciliation proceeding which is discontinued under clause (b) of section 64 shall be deemed to have been completed on the date referred to in the said clause, and the provisions of section 58 with regard to the submission, forwarding and publication of reports shall apply to such conciliation proceeding.
Conciliation proceeding discontinued deemed to be completed.

Cf. Old Law :— Section 64 is substantially recast, and is now completely changed from the corresponding provision in section 46 of the Bombay Industrial Disputes Act, 1938, which was analogous to the present sub-clause (i) of clause (a). Sub-clauses (ii) and (iii) and clause (b) providing for discontinuance are newly enacted and section 65 is also newly enacted in pursuance to the newly inserted clause (b) in section 64 relating to discontinuance of conciliation proceedings. (See commentary under sections 56 to 61.)

CHAPTER XI

Arbitration

Introductory :—The two main features of the Bombay Industrial Disputes Act, 1938, were conciliation which was compulsory, and arbitration which was voluntary. An obligation was imposed upon the employers as well as the employees to go through the conciliation stage first, leaving the option to the parties thereafter, to settle the dispute by direct action or by arbitration, in which case the award would be binding on both the parties. Of course thereafter, the newly enacted section 49 A and amended rule 81 A of the Defence of India Rules had in certain cases introduced compulsory arbitration. From the experience of the working of the previous Act and considering the frequent calls on Government during recent years, from employees as well as employers for compulsory adjudication of disputes, the clause relating to references of disputes to the arbitration of the Industrial Court at the instance of the Provincial Government has been redrafted.

66. (1) Any employer and a Representative Union
 Submission. or any other registered union which is a
 representative of employees may, by a
 written agreement, agree to submit any present or future
 industrial dispute or class of such disputes to the arbitration
 of any person whether such arbitrator is named in such
 agreement or not. Such agreement shall be called a
 submission.

(2) Such submission may provide that the dispute
 shall be referred to the arbitration of a Labour Court or
 the Industrial Court.

(3) A copy of every such submission shall be sent
 to the Registrar who shall register it in the register to be

maintained for the purpose and shall publish it in such manner as may be prescribed.

*Cf. Old Law :—*This section substantially reproduces the provisions of section 43 of the Bombay Industrial Disputes Act, 1938, except that it makes it obligatory that the registered union entering into the submission must be a representative of the employees, by the substitution of the words "a Representative Union or any other registered union which is a representative of employees" instead of the words "a registered union". Under the old law a registered union, though not a representative of employees, could enter into a submission so as to bind only its own members and not all the employees in the centre by the award, but it cannot enter into a submission under this Act unless it is a representative of employees or is a Representative Union. Therefore, the effect of a submission, under section 66, to which a representative of employees is a party, would be that the award would be applicable to all the employees in the centre, whether present or future, directly affected by the dispute, whether they are members thereof or not (Cf. App. No. 33 of 1941—F.B.).

ARBITRATION

Arbitration under this Act is generally voluntary by means of an agreement under section 66, but the provision for compulsory arbitration is also made in sections 71, 72 and 73 at the instance of the Provincial Government, and under Rule 81 A of the Defence of India Rules, which have been continued by the Emergency Provisions (Continuance) Ordinance, 1946.

1. Voluntary arbitration or Submission :—

(a) *Submission defined*:—Under section 66 (1) a submission is a written agreement between any employer and a Representative Union or any other registered union which is a representative of employees or between the parties in a conciliation proceeding under section 58 (6), to submit any present or future industrial dispute or class of such disputes to arbitration of any person whether such arbitrator is named therein or not.

(b) *Submission to be registered*:—Whenever a submission is entered into, a copy thereof shall be sent to the Registrar for registration and publication. (See section 66 (3) and Rules in Appendix I as to the manner of publication.)

(c) *Who can be arbitrators* :—The submission may provide under section 66 (1) and (2) for the reference of the dispute to the arbitration of any particular person or of a Labour Court or the Industrial Court. But if no such provision is made for appointing the arbitrator or where by reason of any circumstance no arbitrator is appointed, the dispute shall be referred under section 71 to the arbitration of a Labour Court or the Industrial Court, as the Provincial Government may determine.

(d) *Submission when revocable* :—In the absence of a contrary provision to that effect, every submission shall be under section 67 irrevocable, except that a submission for reference of future disputes may be revoked by any party by giving a six months' notice in writing, unless during the said period of six months an agreement is arrived at to continue it for any further period.

(e) *Duration of a submission* :—(See commentary under section 116.)

(f) *On whom binding* :—(See commentary under section 114.)

(g) *Whether it can be withdrawn* :—A submission can be withdrawn by the parties with the permission of the Court to whom the reference is made (Sub. No. 2 of 1942-F. B.).

2. Compulsory Arbitration :—(See commentary under sections 71 to 73.)

3. Conduct of Arbitration :—(See commentary under sections 67 to 70.)

4. Effect of Arbitration on conciliation proceedings :—

(a) *Before commencement of conciliation* :—Under section 64 (a) if there is a submission under section 66 relating to the dispute or a dispute relating to a similar industrial matter, to which the registered union, which is the representative of employees directly affected by the dispute, is a party or if there is a compulsory arbitration in the dispute under section 72 or 73, no conciliation proceedings shall be commenced by the Conciliator and the dispute shall at once be referred to arbitration.

(b) *At any stage of conciliation* :—Even if such submission is entered into or the dispute is referred to compulsory arbitration at any stage of the conciliation proceedings, they shall be deemed to have been completed and shall not be continued after that date and the dispute shall be forthwith referred to arbitration. (See section 64 (b), 63 (ii) and section 58 (6).)

(c) *At the close of conciliation* :—Under section 58 (5) the Conciliator, is required to ascertain from the parties before the close of the proceeding, whether they are willing to refer the dispute to arbitration; and if a submission is entered into, the dispute shall be referred to such arbitration.

5. Principles laid down in certain awards :—Many important awards were given by arbitrators and by the Industrial Court under the corresponding provisions of the Bombay Industrial Disputes Act, 1938. It would be beyond the scope of this book to give the details and findings of these awards on questions not pertaining to law, but certain outstanding principles laid down in these awards are mentioned below for general information.

1. Dearness Allowance :—(a) *Nature* :—Dearness allowance is paid for the reason that a particular worker turns out some work for the employer. It is a payment demanded by the worker in connection with the work he is doing, although the basis of the demand is a rise in the cost of living. In demanding dearness allowance the worker in effect says that due to rise in prices, the money which he was receiving prior to a certain day had ceased to give him adequate purchasing power; that the amount originally paid to him did not go far enough and that he should be paid something more than he was getting, whether it is called by additional wages or by "dearness allowance" to restore him the fall in the "real wages" (Sub. No. 1 of 1945—F.B.).

(b) *It cannot be made dependent on efficiency etc.* :—Dearness allowance is granted only to mitigate the increased cost of living and for no other reason. Where, therefore, conditions are attached to its grant, relating to good attendance or efficiency for the purpose of better production, they must be deleted, and the workers must be restored the cut attached to these conditions. Such conditions can be attached to the grant of "Good attendance or Efficiency bonus", but not to the grant of dearness allowance (Ref. No. 8 of 1946—F.B.).

(c) *Jurisdiction of the Court* :—Since dearness allowance is a matter relating both to work and wages, it must be deemed to be an industrial matter. In effect it was held so in a Full Bench decision in App. No. 33 of 1941, "The term wages would include dearness allowance. That being so it falls under item (9) of Schedule II and any change with respect thereto would be a change which would necessitate a notice of change." In App. No. 10 of 1941 it

was observed that the payment of dearness allowance was an industrial matter mentioned in Schedule II and a change therein would be "such change" within the meaning of section 73 (2) of the Bombay Industrial Disputes Act, 1938. Hence the Court had jurisdiction to decide the question of dearness allowance (Sub. No. 1 of 1945—F. B.).

(d) *Awards relating to the dearness allowance paid to the Textile Workers in Ahmedabad* :—The Industrial Court has given interesting awards in connection with the question of dearness allowance which was referred to the Industrial Court by the Ahmedabad Textile Labour Association and the Ahmedabad Mill-owner's Association due to the rise in the cost of living.

In Submission No. 1 of 1940—(F. B.) an important principle was laid down that the workers would not be entitled to a rise to the full extent of the rise in the cost of living unless it could be shown that the industry had benefited to a corresponding extent by the very contingency which occasioned the rise in the cost of living; and it was held in the award, dated 26th April, 1940, that every 15 per cent. rise in the cost of living entitled the workers to get a relief to the extent of 10 per cent. of their wages, thus neutralizing the rise in the cost of living to the extent of 66 2/3 per cent. This fifteen per cent. rise was reflected in the cost of living index number which rose from 73 in the month of August, 1939, to 84 in the month of December, 1939. The average wage of a Textile Worker in Ahmedabad was considered to be Rs. 35/- per month. The award directed that (84-73=11 points) 11 points or 15 per cent. rise in the cost of living entitled the workers to a dearness allowance of Rs. 3-8-0 (i. e. 10 per cent. of wages).

This award continued in force till September, 1941, when again it was modified by a supplementary award on 15th September, 1941, increasing the scale of dearness allowance by 45 per cent. over the old scale, which neutralized the rise in the cost of living to the extent of 96 per cent (Sub. No. 1 of 1940—F. B.).

Thus grant of dearness allowance was linked up with index numbers showing the rise in the cost of living, the result of which was that with the increase in the cost of living the dearness allowance to be paid to the workers also increased. The datum index number was taken to be 73 in the month of August, 1939, which was a fairly steady figure during five years before the war after the fall in the index figure after 1926 when the cost of living

inquiry was made and the figure 100 was taken as of the prices ruling in that year. Under the supplementary award, for every 11 points rise the workers were entitled to a dearness allowance of about Rs. 5-0-0, so that the formula for dearness allowance was $5/11 (X-73)$, where X was the index number of the third month prior to the month for which it was computed. The position continued till September, 1943, when the Petition No. 1 of 1943-(F.B) was made by the Ahmedabad Millowners' Association for a substantial reduction in the quantum of dearness allowance under the above awards, because the profits had been considerably reduced. It was held that the profit cannot be regarded as a percentage of the working expenditure, but it must be related to the invested capital. The difference between the price of the finished product and the cost of the raw materials is undoubtedly the actual profit, but it must be related back to the total investment of the Company and cannot be calculated in terms of the percentage of the cost of raw materials. The cost of making the finished product, which includes the raw materials, wages and the interest charges is counter-balanced by the price of the finished product, and the difference between the two is the actual profit. So if the profit is to be calculated on the basis of a percentage return, it must be not on the cost of raw materials but on the capital outlay of the Company. The Court finally held "we are not satisfied that the condition of the industry at present is such as to justify any reduction being made in the existing scale of dearness allowance". Facility was given to the Ahmedabad Millowners' Association to approach for a reduction, if the profits of 1943 were substantially affected, which was not availed of and the dearness allowance continued to be paid on the original scale as modified before.

After the expiry of three months of the termination of the European war on 8th August, 1945, as the workers were not entitled to get dearness allowance under the original awards, a fresh Submission No. 1 of 1945-(F.B.) was made, wherein it was held that there was nothing in the agreement above mentioned which precluded the Textile Labour Association from making any independent demand for dearness allowance for the period commencing with the expiration of three months after the end of the European War, irrespective of the original agreement and the award which came to an end on 8th August, 1945, on such materials as it could place before the Court at that stage. After considering the conditions of the industry, it was held that so long as the industry was making substantial profits, it could not resist the claim for dearness

allowance merely because the industry at another centre was making larger profits. The award was given to the effect that "The rise in the cost of living should be neutralized to the extent to which it was neutralized at Bombay, i. e. 76 per cent". By arithmetical calculation this would be done if Rs. 4/- were paid as dearness allowance for every 11 points rise in the cost of living over the datum index number 73. So the formula for dearness allowance was set out to be $\frac{4}{11} (X-73)$, X being the index number of the third month prior to the month for which it was computed. This dearness allowance was directed to be paid to the workers entitled under the original award month by month for a period of one year from 8th August, 1945, at the end of which the parties were at liberty to approach the Court for its continuance or revision (Sub. No. 1 of 1945—F. B.). Thereafter, in the Revision Petition No. 1 of 1946 filed by the Textile Labour Association, Ahmedabad, it was held that applying the usual test for the extent of neutralization that the workers should not be entitled to a rise in the cost of living unless it could be shown that the industry had benefited to a corresponding extent by the very contingency, viz. War and its after-effects, which had occasioned the rise. There was no such evidence to permit full neutralization, and the previous award was continued for 7 months from 8th August, 1946, after which the parties could apply for revision. It was also held that for the purposes of dearness allowance the basis of actual income of each worker should be adopted and not of the expenditure of each family on the basis of 1.58 earners per each family. As for the figures of cost of living index, compiled by the Labour Office, it was held that they would be taken as safe guide unless manifestly proved to be wrong (Revision Petition No 1 of 1946—F. B.).

Interpretation of Ahmedabad awards :—

Persons entitled to dearness allowance under the Ahmedabad awards :—For securing dearness allowance one had to satisfy four tests for being included in the category of persons with respect to whom the Submission No. 1 of 1940—(F. B) was made, viz. :—

- (1) Persons who are employed by the Mills in connection with the Textile Industry;
- (2) For the payment of remuneration to whom the Mills hold themselves responsible;
- (3) Whose cost of living was affected by the rise in the price of foodstuffs; and

(4) To whom the grant of dearness allowance would come as an appreciable relief.

It was, therefore, held in the interpretation of this award in App. No. 19 of 1940—(F. B.) that it did not apply to workers who were employed by the contractors, for the Mills were not responsible even to pay their normal wages; and also that this relief was to be given only to the workers whose pay did not exceed Rs. 75/- a month. The benefit of the award was, therefore, allowed to—

(i) All clerical and supervisory staff whose pay did not exceed Rs. 75/- a month;

(ii) To workers such as pattawallas, watch and ward men, supervisors, jobbers and muccadams;

(iii) To workers who are working part time such as reelers etc.; and

(iv) To all *badli* workers.

It may be noted that in Submission No. 1 of 1945—(F. B.) entered into after the War, it has been held that dearness allowance under that award, neutralizing the rise in the cost of living only by 76 per cent., is only to be paid to the persons entitled under the original award. Neither the workers employed by the contractors nor those drawing a pay of more than Rs. 75/- a month would be entitled to receive it. But an agreement has been arrived at between the parties under which 66 $\frac{2}{3}$ per cent. and not the full dearness allowance is paid to the workers employed by the contractors, and those drawing a pay of more than Rs. 75/- a month.

Interpretation of "worker" :—The import of the word "workers", in the award, dated 26th April, 1940, in Submission No. 1 of 1940—(F. B.), is not limited by the use of the word 'permanent' or 'temporary', nor is limited only to classes or categories enumerated in the notification, dated 1st June, 1939, issued by the Registrar (App. No. 19 of 1940—(F. B.) followed in App Nos 132 to 140 of 1943).

Interpretation of "working conditions" :—The words "working conditions" should be interpreted in the same sense as "trading conditions" of the industry which would include purchase value and stocks of cotton and stores, and sales of cloth and yarn in the case of Cotton Textile Industry (Sub. No. 1 of 1940—F. B.). The general trend in the fortunes of the Cotton Textile Industry is more or less uniform. The principal factors in evaluating the position of the industry are the prices of cotton, stores and the wage-bill on the

one hand and the prices of cloth on the other (Ref. No. 1 of 1941-F. B.). In considering the working condition of a particular industry, the Court has not to take into consideration the financial condition of each individual unit comprised in the industry, but the general working condition of the industry in the area concerned as a whole (App. No. 55 of 1940-F. B.).

Persons employed in connection with the Textile Industry:—

There is a distinction between the expressions "employees of the Textile Mills" and "persons employed in connection with the Textile Mills". The former obviously means persons actually employed in the Cotton Textile Industry, while in the latter, the connection between the textile industry and those persons is not necessarily so close (App. No. 108 of 1943). It has been held that ayahs and nurses, canteen staff, a gardner, a waterman, a dhobighat worker, etc. are all entitled to dearness allowance, for although they do not work directly in connection with the machines, they are persons employed in connection with the Textile Industry (App. Nos. 201 and 226 of 1943; App. Nos. 100 and 101 of 1945; App. No. 30 of 1942). The mere fact that the nature of Hosiery manufacture is different from that of other branches of the Cotton Textile Industry would not be a sufficient reason to exclude Hosiery workers from the scope of the award, for Hosiery concerns are essentially a part of the Cotton Textile Industry in the Province of Bombay. If an association felt that different factors governed a particular branch of industry and they wanted that they should have been differently provided under the award, such case should have been made out in the proceedings, otherwise the award would be applicable to all the workers (App. No. 47 of 1940-F. B.).

For payment of remuneration to whom the Mills hold themselves responsible :—Contractor's men and dearness allowance:—
(See commentary under section 3 (13) under the heading "Contract Labour", where the question is fully discussed.) The position under the previous law is much changed as the definition of "employee" includes contract labour, except where the contract is for the execution of a work, *which is not ordinarily a part of the undertaking*. Under the new Act even contract labour except as provided above, will be entitled to full dearness allowance and not to 66 2/3 per cent. as was paid under the previous Act.

Calculation of dearness allowance :—Paid for working days alone:—Number of working days should be ascertained from the record of the Mills and the applicant is entitled to be paid his

wages and dearness allowance for the said working days (App. No. 106 of 1943).

Pay not exceeding Rs. 75/- a month :—For calculating the pay of the workers the test of average pay for actual number of days the Mill worked during each calendar month should be adopted, and the workers will be entitled to full dearness allowance and not $66 \frac{2}{3}$ per cent., if such average pay for the month does not exceed Rs. 75/- (App. No. 76 of 1945).

Interpretation of reasonable time :—Reasonable interpretation must be put as regards matters on which the award or the statute is silent. In interpreting the award it must be presumed that the dearness allowance should be paid within a reasonable time after the date when it became due. Mere acceptance of the liability to pay the dearness allowance and the expression of a benevolent intention to pay it sometime can hardly be regarded as an action in consonance with the terms of the award. Under the Payment of Wages Act, 1936, the wages are to be paid within 7 or 10 days after the wage period for which they are due. The reasonable time cannot be defined with any precision, but a period of one month would not be unreasonable (App. No. 12 of 1941).

Short payment or non-payment of dearness allowance on the due date is an illegal change :—Full dearness allowance to which the worker is entitled whether under the award or an agreement must be paid to him as it becomes due within a reasonable time, and any short payment will constitute an illegal change. Therefore, it must necessarily follow that non-payment would also constitute an illegal change. It would be ridiculous to contend that if five rupees were awarded as the dearness allowance and if one anna was paid the action would constitute a change in the terms of the award, but that if nothing was paid there would be no change as such (App. No. 12 of 1941). Under this Act section 46 (5) provides expressly that failure to carry out the terms of any registered agreement or award amounts to an illegal change. It would be no defence to such an application that dearness allowance has been subsequently paid up (App. No. 1 of 1943 and 22 of 1942).

Premature application :—Where the application for an illegal change was premature in as much the dearness allowance had not become due at the date of the filing of the application, it was held that the fact was that no dearness allowance was paid as agreed to, and the court was entitled to take it into consideration at the

time of hearing, and therefore, declaration for an illegal change was granted (App. Nos. 33 and 42 of 1941—F. B.).

Locus standi of "employee" alone to present an application :—If the name of the applicant is not to be found on the muster roll of the mills at the date of the application, he has no *locus standi* to make an application of short payment or non-payment of dearness allowance (App. No. 76 of 1945). Therefore, a discharged or a dismissed employee cannot file such application.

Remedy of the employee in case of short or non-payment of dearness allowance :—The worker, who is not paid the full dearness allowance to which he is entitled, may either proceed under the Payment of Wages Act, 1936, to recover the delayed wages, as dearness allowance forms part of wages (App. Nos. 10, 32, 33 and 42 of 1941—F. B.) or he may file an application for declaration of an illegal change, and thereafter get the employer convicted for committing an illegal change. Under the present Act under section 78 (3) the employer may be required to withdraw any illegal change, and such order would have to be complied with under section 47 within the time in the order or within 48 hours if no time is specified therein.

Dearness allowance to badlies —There is no reason for giving a lower dearness allowance to *badli* or substitute operatives and they should get dearness allowance on the same scale as the other workers as is done in Bombay and Ahmedabad (Ref. No. 8 of 1946—F. B.; Ref. No. 7 of 1946).

Dearness allowance to be considered for determining compensation for closure or overtime payment :—It has been made clear by the Government of India that dearness allowance should be treated as a part of ordinary rate of pay for the purposes of calculating overtime payment under section 47 of the Factories Act, 1934. (*Vide* :—Indian Labour Gazette Feb., 1946, P. 249.) In the award made by K. B. Wassoodew J. (Retired) in the dispute between the Pratap Spg. and Wvg. Co. Ltd. Amalner, and its employees (*Vide* :—1946 B. G. G. Part I at Pp. 1141-46), the adjudicator decided that dearness allowance must be included in pay and wage-rates in determining compensation for closure due to coal-shortage (Ref. No. 7 of 1946).

2. **Bonus** :—(a) *Nature* :—Earl of Birkenhead observed in (1923) 39 T. L. R. 294, " Bonus is used to describe payments made of grace, and not as of right. But it may include

payments made because legally due, but which parties contemplated were not to continue indefinitely". These observations have been relied upon in 46 Bom. L. R. 795 (797) and were followed by Bhagvati J., in 48 Bom. L. R. 551, in the Indian Hume Pipe Case, and were upheld in appeal by Stone C. J. and Kania J., the latter observing, "Bonus may mean an *ex-gratia* payment but may include a payment which could be legal matter."

Ex-gratia payment: Bonus and gift distinguished :—

Bonus is a gratuitous payment and it cannot be claimed as of right. It is a reward given for work already done over and above the agreed payment of wages, as the employers have made handsome profits out of the work of the employees. Such payment is not a pure gift which may have no relation to work done or to be done by the donee, as it is asked as an extra payment for work already done (Ref. No. 1 of 1945—F.B.). In App. No. 158 of 1943 it has been held that if a certain additional remuneration is paid to some of the old tried and trusted servants and the payment is not regulated by any particular rule based on the amount of work turned out or on the regularity of attendance, and is not based on any system but entirely depends on the volition of employers who may or may not pay it for a particular month, it cannot form part of wages. Wages imports the idea of legal liability on the part of the employer to pay a definite sum; so *ex-gratia* payment which has no relation whatsoever with the work done or efficiency or attendance, which may be withheld at the option of the employer cannot be regarded as "wages." In 42 Bom. L. R. 955 also it was held that "wages" means wages actually earned and not potential wages; and it does not include bonus, which is not earned by an employee under the terms of a bonus scheme. In App. No. 87 of 1944, the Full Bench also took a similar view, though it left the question whether bonus formed part of wages or not undecided, and held that bonus being an *ex-gratia* payment, grant of it subject to any conditions whatsoever could not affect adversely the conditions of workers.

Bonus and Jurisdiction of Industrial Court :—The mere fact that the workers have no legal right under the Act to a bonus does not affect their right under the Act to demand the payment of bonus as a reward, and such demand is an industrial matter to be adjudicated by the Industrial Court (Ref. No. 1 of 1945—F.B.). In 48 Bom. L. R. 551 in the Indian Hume Pipe Case, Bhagvati J. in Misc. App. No. 95 of 1945 decided that a dispute regarding payment of bonus was a trade dispute under section 2 (j) of the Trade Disputes

Act, 1929, and by virtue of Rule 81 A (1) (c) of the Defence of India Rule be made the subject matter of reference to an Adjudicator. This decision was upheld in appeal by Stone C. J., who decided that even accepting the primary meaning of bonus as a gift or gratuity, it is not asked as a matter of patronage or bounty, and as it is demanded as a matter of right and a strike is threatened, there is a trade dispute; and Kania J., also held that as bonus may mean an *ex-gratia* payment and include a payment which could be a legal matter, there was a clear dispute as regards the terms of employment, and a trade dispute had arisen under section 3 of the Trade Disputes Act, 1929 and Rule 81 A (1) (c) of the Defence of India Rules. Leave to appeal to the Privy Council was refused in the case. (*Vide* :—The award of Mr. Nanavaty *re*:—Indian Hume Pipe Co. Ltd. and employees of Wadala Factory at 1946 B. G. G. Part I at P. 1376.) In Ref. Nos. 6 of 1946 and 10 of 1947—(F.B.) the industrial right to get bonus for any year in which the profits were fairly large was recognised.

When bonus is a matter of right:—In 42 Bom. L. R. 955 it was held that "wages" means wages actually earned and not potential wages, and does not include bonus which is *not earned by an employee under the terms of a bonus scheme*. If bonus is payable under an agreement and is made dependent on work actually done or on number of days worked, whether the employee is at present in employment or not, it must be included in "wages." Its dependance on work actually done shows its close connection with work and it cannot be said that it was decided to be paid merely as a matter of grace or that its object was to induce or ensure better work or more efficient work (46 Bom. L. R. 795 (798)).

Sukhadi and extra bonus as distinguished from regular bonus under a bonus scheme :—Wages are a matter of right. Dearness allowance is also a matter of right under the awards of the Industrial Court. A regular Bonus is also a matter of right under an agreement between the Textile Labour Association, Ahmedabad, and the Ahmedabad Millowners' Association. But as far as the Extra Bonus and Sukhadi are concerned, they depend entirely on the discretion and goodwill of the management, and so a member of the staff who has not the goodwill of the management cannot get these amounts (App. No. 162 of 1943).

Grant of bonus with conditions :—Bonus being an *ex-gratia* payment, grant of it subject to any condition whatsoever, *s. g.* to

be paid only to the persons continuing on the muster roll till the date of payment, cannot be a circumstance affecting adversely the conditions of employees as it obtained before the grant, if it governed the entire class of workers. Hence failure to give a notice of change is not an illegal change, as the change was not likely to lead to an industrial dispute (App. No. 87 of 1944-F. B.). Conditions of "good attendance or efficiency" can be attached to the grant of bonus, but not to the grant of dearness allowance (Ref. No. 8 of 1941-F. B.).

*Principles to be considered in granting bonus :—*It is clear that the demand of bonus, though not based on any legal right arising out of a contract, express or implied, has to be decided on broad principles of justice, equity and good conscience. The notion that bonus can only be claimed by the workmen, if their demand is based upon a legal right founded on a contract, express or implied, must be given up. The only just and equitable principle upon which the employer may be called upon to grant a bonus to the employees is to consider the amount of profits made by the employer in any given year and the general financial condition of the concern and its capacity to bear this additional burden of granting bonus, without impairing its efficiency or injuring the business in any vital manner. (*Vide* :—Mr. Nanavaty's award *re* :—The Indian Hume Pipe Co. Ltd., and employees of Wadala Factory at 1946 B. G. G. Part I at P. 1376.) The scale of dearness allowance can have no bearing on the question of reasonableness or otherwise of bonus, which must largely depend upon profits earned in a particular year. It has also no connection with question of inadequacy of compensation for closure due to coal shortage, and no such factor can be considered in determining quantum of bonus (Ref. No. 2 of 1946-F. B.). Even where a mill company had made a loss of about 6 lacs of rupees, it was directed to pay bonus at the rate of 12½ per cent. of the total earnings, as it had offered to pay it at the rate of 10 per cent. and as other concerns paid large bonuses (Sub. Nos. 5 and 6 of 1946-F. B., wherein Ref. No. 3 of 1946-F. B. referred.).

(b) Ahmedabad awards regarding payment of bonus :—

The payment of regular bonus to the Ahmedabad Textile workers has been a matter of right under the agreement between the Textile Labour Association and the Ahmedabad Millowners' Association (App. No. 108 of 1943). The first agreement dated 2-12-41 for payment of bonus for the year 1941 applied to employees of the

member Mills mentioned in the Schedule attached thereto. (*Vide* :—1941 B. G. G. Part I at P. 4378.) The second agreement for bonus for 1942 dated 8-1-43 applied to the same employees (*Vide* :—Bom. Lab. Gaz. Vol. 22 at P. 308.) The third agreement dated 8-1-44 for bonus for the year 1943 was substantially modified so as to apply to all employees earning less than Rs. 200 per month as wages or salary, excluding dearness allowance, bonus or other emoluments, if they had applied to the manager in writing before 30-4-44. The quantum of bonus to be paid to contract labour and employees getting more than Rs. 200/- a month was left to the discretion of the individual mills. But it was provided that in computing the amount, maternity allowances paid to women employees should be included in the wages. (*Vide* :—Bom. Lab. Gaz. Vol. 23 at P. 443.) The award dated 11-11-45 for the year 1944 reproduced the above agreement, providing the date of application to the manager 30-11-45 (Ref. No. 1 of 1945). The last agreement for the year 1945 provided for application before 30-6-46, if the employee was not given bonus. (*Vide* :—1946 B. G. G. Part I at P. 1190.)

Canteen workers :—Workers in a canteen department are entitled to a bonus, where they are treated as permanent operatives by the Mill Company by giving permanent tickets, and there is hardly any need to enter into the discussion whether persons employed in connection with the Textile Industry are the employees of the Mill or not (App. No. 108 of 1943).

Dhobigat workers :—Dhobigat worker, who was the employee of a contractor, was included in item (6) in the Schedule attached to the agreement dated 8-1-1943 for the year 1942, so he was held to be entitled to bonus (App. No. 27 of 1943-F. B.).

Exclusion of grain-allowance in computing bonus :—Even if the grain-allowance formed part of wages, and not of dearness allowance which is necessarily to be excluded in computing bonus, non-payment of part of such bonus would not be an illegal change, if there was no agreement, settlement or award under which bonus was given, it being entirely a gratuitous payment. There would be no question of contravention of any agreement, settlement or award, and the Mills would be justified in excluding these allowances in calculating bonus (App. Nos. 62-66 of 1945-F. B.).

(c) **Position under this Act** :—The present Act has introduced an extensive definition of "wages" in section 3 (39) so as to include any sort of bonus or reward even, and has deleted the limitation

attached to the word "bonus" by the qualifying words "of the nature aforesaid which would be so payable". It seems under this Act even a gratuitous bonus might form part of wages, and might be a matter of right. (See commentary under section 3 (39).)

3. **Increase of basic wages** :—If the wage rate compares favourably with that paid in similar concerns, competing with the concern, it is natural that the concern should not be singled out to set an example of higher wages without general concurrence of the industry. A minimum monthly rate of Rs. 55/- set out by the Textile Labour Committee is the ideal to be aimed at, which would be reached with higher degree of skill, equipment and management. (*Vide* :—K. B. Wassodew J. (Retired), Esquire, in Mazgaon Dock Ltd., Bombay, at 1946 B. G. G. Part I at P. 1721.) In Ref. Nos. 6 of 1946 and 10 of 1947 it was held that basic wage must be raised to such an amount that along with dearness allowance the total emoluments would be sufficient to afford a decent livelihood.

Discontinuance of wage increase not recommended :—In a dispute where the millowners proposed the withdrawal of increases granted in wages in pursuance of the recommendation of the Textile Labour Inquiry Committee in their interim report, the Full Bench of the Industrial Court examined the balance sheets of the mills, which disclosed that in spite of the wage increases granted in 1938 most of the mills had shown substantial profits. The condition of the industry had improved, and as the wage increases were not *prima facie* onerous, discontinuance thereof was not recommended (Ref. No. 1 of 1941—F. B.).

4. **Time-scale of wages** :—D. G. Kamerkar observed, "I am much impressed by the argument that in private industrial enterprises automatic promotions by stages are not advisable as such enterprises stand or fall with the efficiency of their workers, and such efficiency does not necessarily increase among workers with the amount or period of work they put in. Moreover the workers themselves as much as the employer would see the elements of discord and dissatisfaction in such a wage-system. Men who do not deserve promotion automatically run the time-scale and a wide leeway for favouritism is left to the superior officers even though efficiency bars are introduced at certain stages. The employer can ill-afford to bind himself down to definite financial obligations without a certainty as to his profits in the future. The solitary precedent relied upon was from the award of E. M. Nanavaty (Bom. Lab. Gaz. Vol. 22 Oct. 1942 at Pp. 109-110), who latter regarded such

a claim to be fantastic. (Bom. Lab. Gaz. Vol. 24 Feb. 1945 at Pp. 370-71). Not even the Textile workers have been allowed a time-scale wage, though the wage levels are almost standardized. (Re:-Copper Engineering Ltd. Satara Road, and its employees-at 1946 B. G. G. Part I at P. 3551.) Wassoodew J. (retired), also observed that such an automatic time-scale is harmful both to the employers and employees and no time-scale in higher grades could be worked successfully without efficiency tests. (Re:-Award in Mazgaon Dock Ltd. Bombay at 1946 B. G. G. Part I at P. 1721.) But such time-scale of wages has been granted in case of the Banking Industry (Ref. Nos. 6 of 1946 and 10 of 1947).

5. Holiday or sick leave with pay :-D. G. Kamerkar observed, that the demand for holidays with pay on Sundays and Gazetted Holidays or half Saturdays, was without any precedent. He also observed that beyond the provision in the amended Factories Act, 1934, (Act III of 1945) allowing ten days' leave in a year there is no precedent for allowing sick leave or privilege leave with pay.

Re:-Copper Engineering Ltd. dispute—See *supra*). Banking clerks are granted privilege or casual leave with full pay and also sick leave, half of which may be with full pay (Ref. Nos. 6 of 1946 and 10 of 1947).

6. Closure due to coal shortage :-

(a) *Stoppage due to coal shortage is beyond control :-*
Stoppage due to the difficulty of transport of coal necessary for running the undertaking is for a reason beyond the control of the employer and is covered by the provisions of standing orders. The employers are, therefore, entitled to close down the undertaking without any notice and without compensation in lieu of notice, and the workers are not entitled to wages during such unemployment, except to the limited extent provided in standing orders (Sub. No. 4 of 1946—F.B.; and App. No. 17 of 1944).

(b) *Compensation due to coal shortage, stoppage and Jurisdiction of Court :-*Standing orders being determinative of the relationship of the employer and employees, *prima facie* the claim of wages for closure due to coal shortage, which is covered by the provisions of standing orders, is not legally enforceable in a court of law upon an alleged breach of the contract of service. But even though the workers may not be entitled to demand wages, there is no bar to their demand for compensation for loss of earnings. It cannot be said that if a matter is covered by standing

orders, no demand can be made by the workers for any loss which they might suffer due to the operation of the standing orders. As the demand for reinstatement by an employee lawfully discharged under standing orders is held to be an industrial matter, it would follow that such demand for compensation for loss of earnings, even though the workers are not entitled to claim wages, would be an industrial matter, and the jurisdiction of the Industrial Court to arbitrate in this dispute is not barred by the provisions of standing orders (Sub. No. 4 of 1946—F. B. and K. B. Wassoodew's award re. Pratap Spg. Wvg. & Mfg. Co. Ltd., Amalner, and Amalner Girni Kamgar Union at 1946 B. G. G. Part I at Pp. 1141-46.). But so long as standing orders are there, they cannot be rendered obsolete by giving workers as compensation what they cannot get as wages, unless they make out a strong case for such grant (Sub. No. 4 of 1946—*supra*).

Government Proposals :—Following the recommendations of the Second Tripartite Conference in September, 1943, the Government recommended in December, 1944, certain benefits to be given for short term unemployment, exceeding seven days at a time, due to war owing to shortage of coal or of raw materials, unless a notice of closure was given under standing orders to permit labour to seek employment elsewhere. Such benefit was to be fixed in two ways :—(i) at 75% - of ordinary rate of wages for first fortnight and 50% thereof for second fortnight, with possibly a flat rate for persons drawing lower levels of incomes; or (ii) at a flat rate of 75% - of average of lower wage rate in the undertaking. Such benefit was not to qualify a worker for bonuses determined by referring to earnings over any period, and was to be given for a month only, allowing a waiting period of 7 days, and was to start from the first day of unemployment, provided it lasted longer than the waiting period of 7 days. These recommendations are to be taken in their entirety, and cannot apply to closures for less than seven days, unless they are *mala fide* (Sub. No. 4 of 1946—*supra*).

Considerations in awarding compensation :—Wassoodew J. (retired) granted compensation at a flat rate of 75 per cent. of daily earnings including dearness allowance, even though waiting period was less than seven days, for he had found that the company had purposely acted with a *mala fide* intention of reducing the waiting period to avoid application of Government proposals, as it had called workers when coal position was precarious and had kept them away when it had improved. (Re :—Pratap Spg. Wvg. & Mfg. Co.

Ltd. Amalner case—*supra*,) But in the absence of such *mala fide* intention, when there is a real coal shortage, no compensation can be awarded if the waiting period is less than seven days on the ground that the employer has made substantial profits, as the employer has also suffered substantial loss on account of stoppage (Sub. No. 4 of 1946—F. B.). The claim was also rejected where in addition the mill had suffered a loss of about 6 lacs of rupees during the year (Sub. Nos. 7 and 8 of 1946—F. B.). In another case the workers were held to be entitled to compensation when closure was for a period of more than seven days. But it was further held that even if there was a day's interval between two periods of stoppages, they cannot be tacked together in absence of proof of *mala fides* on the part of the management. Such compensation was awarded to the daily paid workers at a flat rate of 75 per cent. of average daily earnings, inclusive of dearness allowance, according to the principles as laid down in the award made by J. Wassoodew, (retired) in the dispute between the Pratap Spg. Wvg. & Mfg. Co. Ltd., Amalner and its employees. As the daily paid and daily rated workers were not entitled to be paid their wages on public holidays, no compensation was allowed to them for such holidays (Ref. No. 7 of 1946).

7. Reinstatement :—The Arbitrator in the Reay Paper Mills case in Bombay observed (at Bom. Lab. Gaz. Vol. 25, Sept., 1945, at P. 38), that the relationship of the employer and his employee being based upon a contract, which is essentially of a personal and confidential character, no specific performance can be ordered on the ground of want of mutuality of remedies. When the dismissal appears to be unjustified, the normal course for an Adjudicator to adopt is argument and persuasion. The alternative remedy of the worker against his wrongful dismissal is in law to claim compensation. He may treat the contract as rescinded and claim to be paid for the value of the work done, and for which he has not been paid, and also damages for the pecuniary loss resulting from the wrongful termination of his service. (*Vide* :—Madhusudan Mills Ltd. Bombay and its employees at 1946 B. G. G. Part I at P. 2655.) When the contention was taken before D. G. Kamerkar, Esquire, that no reinstatement could be ordered and the only remedy was to claim compensation for 13 days' wages and no more, it was held, "These observations should have weight in cases where a workman is discharged or dismissed not purely for trade union activities but on grounds of insubordination, instigation to break legitimate orders, habitual disorderly behaviour or doing acts likely to

endanger his own life or of others, but should not apply in cases of victimization. There should be no victimization for a mere trade union activity, but rather an endeavour on the part of all concerned to arrive at a proper understanding of needs and difficulties of either side and to promote healthy growth of such activity. In such a case reinstatement is necessary in view of the rights and conduct of the employees. The Company should be called upon not only to reinstate but award compensation for loss of wages until reinstatement. (Re :-Copper Engineering Ltd., Satara Road, and its employees-*supra*.) Sir H. V. Divatia, the President of the Industrial Court, Adjudicator *re*. Director, Government Transport Service, Bombay and drivers and warners at 1947 B. G. G. Part I, P. 709K, also observed that the question of reinstatement would only arise if the employee had been victimized. Therefore, it seems reinstatement is held to be proper only in case of victimization, or where there is no misconduct on the part of the employee.

Compensation payable on wrongful dismissal :— According to the view of D. G. Kamerkar, Esquire, taken in the Copper Engineering Ltd. dispute referred to above, in case of victimization compensation is not limited to 13 days' wages, but the company must pay for loss of wages until reinstatement. This question was elaborately discussed by Weston J. in Civil Revision Application Nos. 138 of 1945 and 611 of 1944, Kasambhai Kalubhai v. Manager, the Maheshwari Mill Co. Ltd., Ahmedabad under the Payment of Wages Act, 1936. He observed, "If a servant is wrongfully dismissed by his master, he has no remedy in law for a direction of specific performance of the contract of service, and his only remedy lies in damages. There is nothing in the Act entitling the employee to be taken back or to the payment of full wages for the period during which he has been out of employment. Under Standing Order No. 19 which forms in effect the contract between the parties, only thirteen days' wages are payable in lieu of notice, and the operative could not properly claim more than that amount of compensation as damages". It was, therefore, held that after dismissal, wrongful though it might be, the operatives could not be said to be "persons employed" to use the expression of the Payment of Wages Act, 1936, or "employees" to use the expression in the Bombay Industrial Disputes Act, 1938, and they could not be entitled to wages not earned by them. It was further held that it could be urged that the Payment of Wages Act, 1936, had no application to those circumstances as thirteen days' wages payable on dismissal had then become only an amount

of damages due to the operatives. The order of the authority appointed under the Payment of Wages Act, 1936, allowing thirteen days' basic wages, excluding dearness allowance, was restored, and the order in appeal, allowing basic wages until reinstatement on the basis that the operatives continued in employment, was reversed.

8. **Introduction of third shift and change-over in Ahmedabad Mills:**—It has been observed in Sub. No. 9 of 1946-F. B., "On account of various reasons one of which is reduction of working hours to 48 per week, the production of cloth has decreased to an appreciable extent and in the interests of the public there is a national necessity to increase production. It may be that after a certain time the fall in production on account of reduction of hours of work may disappear with increased efficiency of workers but it is bound to take some time and it was one of the objects of the Government to facilitate the introduction of third shift by reducing hours of work." It was held that at present it was not the time when night shift working should be discouraged, and the mills were allowed to work three shifts, with a system of change-over, which was admitted to be conducive to the health and efficiency of workers. Half an hour's recess was provided in case of each shift, and in case of two shifts, work was to be stopped after midnight. Under the system of change-over, at the end of each month workers of first shift were to go to the second, and those of second to third and of third to first in rotation. In case of two shifts the day shift and night shift workers were to change in rotation at the end of every month. This award was to remain in force for one year from 15th February, 1947. The award further provided that the minimum period of working of second or third shift should be three months and that it could be discontinued only after a notice of one month under Standing Order No. 9. A provision was also made for discharge of workers in the order of their juniority when night shift would be discontinued, the question of seniority being determined in case of dispute by Government Labour Officer after looking into the relevant registers of the mills where the worker might have served. Special arrangements for exempting workers who due to age or other reasons could not work at night were also agreed. As to the question of leave with pay to attend meetings it was held that the employer could not be compelled to allow workers to attend the representatives' meetings without any loss of wages, but it was directed that the members of the Committee should be given leave without any reduction of earnings for two hours to attend the Committee meetings twice a month.

9. Banks:—Award for their clerks and low-paid staff in Bombay:—By a notification No. 396/46-I, dated 26th February, 1947, which superseded the old notification, dated 26th September, 1946, all provisions of the Bombay Industrial Disputes Act, 1938, were applied to all banking companies in the Province of Bombay, registered under any of the enactments relating to the companies for the time being in force in any part of His Majesty's Dominions or elsewhere, or incorporated by an Act of Parliament or by Letters Patent. An important award has been recently given by Sir H. V. Divatia, the President of the Industrial Court, in Reference Nos. 6 of 1946 and No. 10 of 1947 in a dispute between Bombay Banks and their employees. It elucidates the following main points:—

(i) *Employee and clerk defined* :—Under section 3 (10) of the Bombay Industrial Disputes Act, 1938, (and section 3 (13) of the present Act) employees would mean only those persons who are either clerks, doing clerical work, howsoever styled; or peons, Jamadars, Havalgars, Hamals, sweepers etc. who are doing manual work. A clerk is generally a person who does routine work of writing, copying, or making calculations under the direction and supervision of an officer. A person whose work is of a purely supervisory or technical nature is not a clerk, and therefore, all other employees such as superintendents, technical assistants and officers would be excluded.

(ii) *Different considerations to be made in the Banking industry* :—The Banking industry stands on a different footing from other industries producing and manufacturing articles by mechanical processes, in which no distinction can be made between the various units of the industry for the purpose of wages. Banks are working under statutory restrictions and a new bank can flourish only after it strengthens its financial position and establishes sufficient credit to attract more business. Therefore, all the banks should not be treated as of equal capacity for the purpose of demands made by the employees. Those banks which have a paid up capital and reserves and deposits of about 15 crores should be classified as "big banks" and those with less than 15 crores as working funds should be classed as "small banks".

(iii) *Basic wage increase* :—It was held that basic wage must be raised to such an amount that along with dearness allowance, the total emoluments would be sufficient to afford a decent livelihood. According to the method of calculation adopted by Rajadhyaksha J. in Postal Clerks dispute the cost of living of a middle

class family was 80 per cent. higher than that of a working class family, and therefore, it was held that a person getting total emoluments of Rs. 125/- in the eighth year of his service, when he would have two children, would meet his family needs, for cost of living of a working family of three consumption units was Rs. 65 to 70 only in Bombay. A maximum was also fixed so that it compared favourably with other services.

Increments :—A period of 25 years for reaching the highest pay in the grade with three efficiency bars in between was held to be fair and reasonable. Increments in the same grade do not so much depend on increasing efficiency, as on absence of deterioration of work or misconduct, and promotion to higher grade depends on all factors including efficiency, which is only that much efficiency which is necessary for doing the daily routine of clerical work.

(iv) **Dearness allowance** :—Peons in Government service as well as in most private institutions get dearness allowance at a flat rate, and sliding scale as in the case of Textile workers is not possible.

(v) **Bonus** :—Grant of bonus was opposed on the ground of participation of profits which was forbidden under section 277 HH of the Indian Companies Act, 1913, but it was held that it was within the competence of a bank to give bonus to shareholders as well as to the members of the staff. The industrial right to get bonus for any year in which the profits are fairly large was recognised. Dearness allowance was directed to be excluded in computing bonus.

(vi) **Provident fund** :—It was held that a condition attached to the provident fund that the employee would get the Bank's contribution on retirement or resignation, only if he signed an undertaking not to join service of any other Bank, without previous consent, was hard and must go.

(vii) **Gratuity** :—It was held that pension or retiring allowance or gratuity must be paid, but the minimum period for claiming any gratuity, except in case of death while in service, by any employee who wishes to resign should be 15 years and if the bank wishes to terminate his services it should be 10 years, and thereafter it should be paid on different scales to persons leaving after 10 or after 15 years of service. But if any condition is attached to its grant requiring the employee to sign an undertaking not to serve in any other bank in India, it should go. No gratuity shall be paid if the employee is dismissed for dishonesty or mis-

conduct. Gratuity shall be calculated on the basis of only substantive salary, excluding dearness allowance, on the date when the employee leaves the service of the bank.

(viii) *Working hours* :—It would not be proper to be guided by the Factories Act, 1934, when the Shops and Establishments Act, specifically governs the case. If there is a clash, the latter Act may be amended by the Legislature. It is not proper for the Court to usurp the functions of the Legislature.

(ix) *Amenities* :—The demand for supplying housing accommodation was rejected, for it could not be made compulsory in this state of acute house-shortage, and because dearness allowance partly covered the rent paid. Two sets of uniforms were ordered to be given every year, but foot-wear was not considered to be part of the uniform. Dining room facilities wherever possible, and benefit of potable water was granted, but the demand for supply of refrigerated water was rejected. Big banks were further ordered to engage a doctor for free medical consultation by the employees.

(x) *Age of retirement* —Age of 55 years was made compulsory for retirement, except in cases where there were no pension rules, where it was made 60 years. The demands for grant of pension insurance, for bonus shares and for allowing employees' representatives on directors' boards were legally objected and were not pressed.

The total benefits which the clerks got were :—(1) Rs. 95 as minimum emoluments per month for big banks and Rs. 80 for small banks, (ii) Fixed grades which would enable them to get Rs. 275 per month as pay at the end of 25 years at which time small banks were also expected to be big enough to pay that amount, (iii) Provident fund, (iv) Gratuity or pension, (v) an industrial right to get bonus for any year in which the profits were fairly large, (vi) Privilege or casual leave with full pay and allowances every year and also sick leave half of which might be with full pay, (vii) Benefit of the free medical consultation in big banks, (viii) Rights to appeal to the highest authority in case of alleged unfair treatment, (ix) Dining room facilities wherever possible and potable water, and (x) Right to apply to the proper court in case of victimization or improper treatment or in case of breach of standing orders or this award. The lower paid staff got the benefit of getting Rs. 50 as starting emoluments in big banks and Rs. 40 in small banks, as well as most of the benefits obtained by the clerks (Ref. Nos. 6 of 1946 and 10 of 1947).

67. Every submission shall in the absence of any provision to the contrary contained therein be irrevocable:

Submission when
revocable.

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing :

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

*Cf. Old Law :—*This section reproduces section 44 of the Bombay Industrial Disputes Act, 1939. (See commentary under the heading of " Submission when revocable " under section 66-*supra.*)

68. The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940, in so far as they are applicable, and the powers which are exercisable by a Civil Court under the said provision shall be exercisable by a Labour Court and the Industrial Court.

Proceedings in
arbitration

69. The arbitrator may refer any question of law arising before him in any proceeding under this Act to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

Special case to be
stated to Industrial
Court.

70. The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

Award by arbi-
trator.

*Cf. Old Law :—*Sections 67 to 70 merely reproduce similar provisions contained in sections 45, 47 and 48 of the Bombay Industrial Disputes Act, 1938.

Conduct of Arbitration :—

(1) *Proceedings in arbitration :—*Under section 68 such

proceedings shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940, and the Court will have all the powers of the Court specified therein.

(ii) *Power of arbitrator to state a special case* :—Section 69 provides for the power of reference by an arbitrator, but it may be noted that such special case can be stated only to the Industrial Court and not to the Labour Court.

(iii) *Power to make the award after hearing* :—Under section 70 it is imperative on the arbitrator to make an award after hearing the parties concerned. If an award is made otherwise, it cannot be binding upon the parties who have not been heard. Therefore, failure of such parties to comply with its terms cannot amount to an illegal change (App. No. 17 of 1940—F. B.).

(iv) *Notice of award to parties* :—Section 74 provides for the notice of the award to the parties and for the registration and publication of the award by the Registrar.

(v) *When award to come into operation* :—Section 75 provides for the operation of the award from the date specified therein or from the date of its publication by the Registrar.

(vi) *Termination of arbitration* :—Under section 76 the arbitration proceeding shall be deemed to have been completed on the date of publication of the award by the Registrar.

71. Notwithstanding anything contained in this Chapter, if no provision has been made in any submission for the appointment of an arbitrator or where by reason of any circumstance no arbitrator is appointed, such dispute shall be referred to the arbitration of a Labour Court or the Industrial Court, as the Provincial Government may determine.

Dispute to be referred to Labour Court or Industrial Court if no arbitrator appointed.

72. (1) Notwithstanding anything hereinbefore contained the Provincial Government may, at any time on the report of the Labour Officer or on its own motion, refer any industrial dispute between employees and employees to the arbitration of a Labour Court or the Industrial Court.

Disputes between employees and employees may be referred by Provincial Government to arbitration of Labour Court or Industrial Court.

(2) The provisions of this Chapter with such modifications as may be prescribed shall apply to such arbitration.

(3) The employers of such employees shall in the prescribed manner be made parties to such arbitration.

73. Notwithstanding anything contained in this Act, the Provincial Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that—

- (1) by reason of the continuance of the dispute—
 - (a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or
 - (b) serious or prolonged hardship to a large section of the community is likely to be caused; or
 - (c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or
- (2) the dispute is not likely to be settled by other means; or
- (3) it is necessary in the public interest to do so.

Cf. Old Law:—These sections provide for compulsory arbitration at the instance of the Provincial Government. Section 71 substantially reproduces section 49 of the Bombay Industrial Disputes Act, 1938. Section 72 is newly enacted to provide for compulsory arbitration in industrial disputes between employees and employers; while section 73 reproduces the provisions in the amended section 49A of the Bombay Industrial Disputes Act, 1938, which is further redrafted to give wider powers to the Provincial Government for the exercise of discretion in cases when it is satisfied that the dispute

is not likely to be settled by other means or it is necessary in the public interest to do so.

Compulsory Arbitration at the instance of the Provincial Government :—*Scope of the sections and Jurisdiction of the Court :—*These provisions are by way of exceptions to the general provisions relating to voluntary arbitration under section 66. They enable the Government to refer an industrial dispute at any time to arbitration, notwithstanding anything contained in the Act, and irrespective of the consent of the parties, (i) when no provision is made in any submission for the appointment of an arbitrator or where by reason of any circumstance no arbitrator is appointed; or (ii) when the dispute is an industrial dispute between employees and employees; or (iii) when it is satisfied on a report of the Labour Officer or otherwise that any of the three consequences mentioned in section 73 (1) are likely to happen, or when the dispute is not likely to be settled by other means or it is necessary in the public interest to do so. When such reference is made, the jurisdiction of the Court to entertain it does not depend on whether the Government had sufficient reasons to be satisfied that the demands had led to an industrial dispute, or whether a demand leading to the dispute had been made by only some workers or whether the procedure for making the demands laid down under the Act had been followed or whether the body which brought the demands to the notice of the Government had the requisite authority under the Act. All that the Court has to see is whether on the materials before it, the dispute which has arisen according to the Government relates to an industrial matter or not (Cf. Ref. No. 1 of 1946—F. B.). In case where no provision is made or no arbitrator is appointed or in an industrial dispute between employees and employees reference may be made to a Labour Court or the Industrial Court, while in case of any other industrial dispute compulsory reference can be made only to the Industrial Court, and not to the Labour Court.

(i) *When no arbitrator :—*If no provision is made for the appointment of an arbitrator in any submission or where by reason of any circumstance no arbitrator is appointed, the Provincial Government shall under section 71 refer the dispute to the arbitration of the Labour Court or the Industrial Court as it may determine. The provision of compulsory arbitration in this case is imperative and not discretionary as in the other two cases under section 72 or 73.

(ii) *Dispute between employees and employees :—*Section 3 (17) defines an industrial dispute as a dispute not only between

an employer and employee or between employers and employees, but also between employees and employees provided it is in connection with an industrial matter. If such an industrial dispute arises between employees and employees, the Provincial Government, may at any time, of its own motion or on the report of the Labour Officer, refer it under section 72 to the arbitration of a Labour Court or the Industrial Court, notwithstanding anything hereinbefore contained in the Act, and irrespective of the consent of the parties. When such reference is made, all that the Court is to see is whether on the materials before it, the dispute which has been referred relates to an industrial matter or not. But in such an arbitration proceeding it is imperative under section 72 (3) that the employers of such employees shall be made parties in the prescribed manner.

(iii) *Any other industrial dispute* :—If the industrial dispute is not between employers and employees, the power of the Provincial Government to refer it to compulsory arbitration of the Industrial Court can be exercised under section 73 only if it is satisfied on a report of the Labour Officer or otherwise that any of the three consequences contemplated in section 73 (1) are likely to happen by reason of the continuance of the dispute, or that the dispute is not likely to be settled by other means or if it is necessary in the public interest to do so.

This section confers wide discretion on the Government to refer practically every major trade dispute to arbitration. Even before a dispute is referred to conciliation and possibility of settlement is tried, the Government is entitled to refer it to compulsory arbitration, if it is satisfied that "dispute is not likely to be settled by other means" or "that it is necessary in the public interest to do so" and the Court will have no jurisdiction to go into the question whether there were sufficient materials or reasons before the Government to be so satisfied (Cf. Ref. No. 1 of 1946-F. B.). In fact the sub-sections (2) and (3) may render the provisions of sub-section (1) nugatory and redundant. But on the principle of harmonious construction of statutes it seems that though the subsequent sub-sections (2) and (3) are capable of reasonable application to the subject specially dealt with by the earlier sub-section (1) of section 73, the Legislature could not have intended by the use of general expressions to repeal or reduce the effect of the earlier sub-section which alone will govern the cases specified therein. General expressions will be construed in a sense distinct from the special provision (45 Bom. L. R. 268).

It may be noted that such compulsory reference can be made only to the Industrial Court, and not to the Labour Court as in the case of an industrial dispute between employees and employees or when there is no arbitrator appointed in any submission.

Compulsory conciliation or arbitration under Defence of India Rules :—An amendment was made in January, 1942, to the Defence of India Rules by introducing Rule 81A conferring wide powers on Central Government, which were delegated to the Provincial Government, to issue general or special orders for reference of industrial disputes to conciliation or adjudication, if it was necessary or expedient to do so for securing defence of British India, public safety, maintenance of public order or efficient prosecution of war or for maintaining supplies and services essential to the life of the community; and also for prohibition of strikes and lock-outs in connection with such disputes and to require employers and workers to observe certain conditions and terms of employment for a given period. The Government had also the power to enforce the award of the adjudicator, thus completely putting a stop to all sort of industrial warfare, which affected large number of workers involving unnecessary loss to them and causing reduction in essential war production or commodities essential to the life of the community. After the expiry of the Defence of India Rules these provisions have been continued by the Emergency Provisions (Continuance) Ordinance, 1946, which has further modified Rule 81A so as to give these powers to the "appropriate Government," which is the Provincial Government, except in case of trade disputes concerning any industry, business or undertaking carried on by the Central Government or by a Railway Company, operating a Federal Railway, and concerning a mine, oilfield or the port authority of a major port where it means the Central Government. These powers can now be exercised if such appropriate Government is of the opinion that it is necessary or expedient to do so for *securing the public safety or the maintenance of public order*.

Hereinbelow is given the text of Rule 81A as modified by the new Ordinance :—

Defence of India Rules 81 A: Avoidance of strikes and lock-outs :—(1) If in the opinion of the appropriate Government it is necessary or expedient so to do for securing the public safety or the maintenance of public order or for maintaining supplies and services essential to the life of the community, the appropriate

Government may, by general or special order, applying generally or to any specified area, make provision—

(a) for prohibiting, subject to the provisions of the order, a strike or lock-out in connection with any trade dispute;

(b) for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order;

(c) for referring any trade dispute for conciliation or adjudication in the manner provided in the order;

(d) for enforcing for such period as may be specified in the order all or any of the decisions of the authority to which a trade dispute has been referred for adjudication;

(e) for any incidental and supplementary matters which appear to the appropriate Government necessary or expedient for the purpose of the order :

Provided that no order made under clause (b)—

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

(ii) where a trade dispute is referred for adjudication under clause (c), shall be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the appropriate Government.

(1A) Where a trade dispute referred for adjudication under clause (c) of sub-rule (1) has arisen only in a particular undertaking or group of undertakings, the appropriate Government may include in the adjudication proceedings any other undertaking either on its own initiative or on an application received in this behalf, whether a trade dispute exists at the time in that undertaking or not, provided that the appropriate Government is satisfied—

(a) that the undertaking to be so included is engaged in the same type of industry or business as the undertaking or the group of undertakings in which the trade dispute referred for adjudication has arisen; and

(b) that the inclusion of the undertaking in the adjudication proceedings will not materially delay the award; and

(c) that the issues involved in the trade dispute referred for adjudication have already given rise or are such as, in the circumstances, may reasonably be expected to give rise, to a similar dispute in the undertaking to be so included.

(1 B) Where an undertaking has been included in adjudication proceedings under sub-rule (1A) the provisions of the rule and of any order or award made thereunder shall (save as may be expressly provided to the contrary in any such order or award) apply to and in relation to such undertaking as they apply to and in relation to any undertaking or group of undertakings in which the trade dispute referred for adjudication has arisen.

(2) Unless any such order makes express provision to the contrary, nothing therein shall affect the power to refer any trade dispute or matters connected therewith for report or settlement under the Trade Disputes Act, 1929 (VII of 1929).

(3) Nothing in the Arbitration Act, 1940 (X of 1940), shall apply to any proceedings under any such order.

(3 A) An order made under sub-rule (1) referring a trade dispute for adjudication shall specify as far as may be practicable the matters upon which adjudication is necessary or desirable:

Provided that—

(i) The appropriate Government may of its own motion, or at the instance of any adjudicating authority, add to, amend or vary the matters so specified;

(ii) The appropriate Government may, with a view to specify the said matters direct the adjudicating authority to make a preliminary inquiry into the nature of the dispute, and postpone specification for such time as may be reasonably required,

(4) If any person contravenes any order made under this rule he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(5) In this rule the expression "appropriate Government" shall mean, in relation to trade disputes concerning any industry, business or undertaking carried on by the Central Government or by a railway company operating a Federal Railway and trade dis-

putes concerning a mine or an oilfield or the port authority of a major port, the Central Government, and in relation to any other trade disputes, the Provincial Government; and the expressions "employer", "lock-out", "strike", "trade dispute", and "workman", shall have the meanings respectively assigned to them in section 2 of the Trade Disputes Act, 1929 (VII of 1929), subject to the modification that the references to "trade or industry" in the definitions of "strike" and "workman" in the said section shall be construed as including the performance of its functions by a local authority.

Government of India, Department of Labour, Order dated 21st August, 1942, as amended on 31st August, 1942.

In exercise of the powers conferred by Rule 81A of the Defence of India Rules and in supersession of the Order of the Government of India, the Department of Labour, dated the 5th March, 1942, the Central Government is pleased to make the following Order, it being necessary to do so for securing the efficient prosecution of the war, namely:—

(i) No person employed in any undertaking shall go on strike in connection with any trade dispute without having given to his employer within one month before striking not less than 14 days' previous notice in writing of his intention so to do.

(ii) No employer of any undertaking shall lock-out his employees in connection with any trade dispute without having given to his employees within one month before locking-out not less than 14 days' previous notice exhibited prominently in his undertaking of his intention so to do, provided that no such notice shall be necessary while a strike exists in the undertaking but a notice of the lock-out shall be sent on the day on which the lock-out is declared to such authority as may be specified by the Provincial Government either generally or for particular area or particular classes of undertakings. (The Government of Bombay has prescribed the authority to receive a notice of lock-out in the case of an undertaking situated in a district, the District Magistrate, and in the City of Bombay, the Commissioner of Labour. *Vide* :—Appendix III, Notification No. 6226/34 of 7th September, 1942.)

(iii) When any trade dispute has been referred to a Court of Inquiry or a Board of Conciliation under the Trade Disputes Act, 1929 (VII of 1929), or for conciliation or adjudication under an

order made under Rule 81A of the Defence of India Rules no person employed in any undertaking concerned in the dispute shall go or remain on strike and no employer in any undertaking concerned in the dispute shall lock-out or continue to lock-out his employees during the period from the making of the reference until the expiry of two months after the conclusion of the proceedings upon such reference.

(iv) No person shall instigate or incite others to take part in, or otherwise act in furtherance of any strike or lock-out which is, or when commenced will be in contravention of the provisions of this Order. (*Vide*:—Amendment dated 31st August, 1942, published in Bombay Government Gazette, dated 12th May, 1945, Notification No. L. R. 1616, dated 4th May, 1945.)

(v) Sub-rule (5) of rule 81A of the Defence of India Rules shall apply to the interpretation of this Order.

Effect of these provisions:—The amendment in the Defence of India Rules will not affect the existing machinery under the Indian Trade Disputes Act, 1929, under which in case of public utility services already a fourteen day's notice of any intended change is obligatory for declaring a strike or a lock-out. But this amendment has conferred powers to issue general or special orders, and under the aforementioned general order, dated 21st August, 1942, a fourteen day's previous notice is obligatory on the employer or employees of any undertaking within one month before locking out the undertaking or striking work. The Government would, therefore, be able to take the matter to conciliation or arbitration during the period of this reasonable notice, and so the intended strike or lock-out and its instigation or incitement would be prohibited until the expiry of two months after the conclusion of the proceedings upon such compulsory reference to conciliation or adjudication. The powers under this rule 81A, excepting the powers under clause (a) of sub-rule (1), for prohibiting a strike or lock-out, were delegated to the Provincial Governments and the Chief Commissioner in respect of their areas. But after the Emergency Provisions (Continuance) Ordinance of 1946, which came in force on 1st October, 1946, the "appropriate Government" is given these powers. It may be also noted that these powers can now be exercised if such "appropriate Government" is of the opinion that it is necessary or expedient to do so for securing the public safety or maintenance of public order. The wide powers under the present general order, therefore, include the powers of prohibiting the strike or lock-out without giving the prescribed notice of 14 days, provided therein, of requiring the em-

employers and employees to desist from the intended strike or lock-out until the expiry of two months after the completion of compulsory conciliation or adjudication proceedings, and of enforcing the decision of the adjudicator. Under the amendments in rule 81 A (1) the appropriate Government has power to extend the scope of adjudication to other undertakings engaged in the same type of industry or business in which a similar dispute has arisen or is likely to arise if their inclusion would not materially delay the award; and under rule 81 A (3) the order of reference may be varied by such Government. Any person who contravenes the provisions of this general order issued under rule 81A is liable to 3 years' imprisonment or fine or with both.

Dispute as to payment of bonus—a trade dispute :—

Justice Bhagwati, in Misc. App. No. 95 of 1945 in the Indian Hume Pipe Co. Ltd. case, decided in an elaborate judgment, that payment of bonus was a trade dispute under section 2 (8) of the Trade Disputes Act, 1929, and by virtue of rule 81 (A) (1) (c) of the Defence of India Rules could be made the subject-matter of reference to an adjudicator. This decision was upheld in appeal by Stone C. J. and Kania J., who held it to be clearly a dispute between parties as regards the terms of employment as it was disputed whether it could be demanded as of right under the terms of employment, and thus was covered by section 3 of the Trade Disputes Act, 1929 and rule 81 A (1) (c) of the Defence of India Rules (43 Bom. L. R. 551). Leave for appeal to the Privy Council was refused. (*Vide*:-Indian Hume Pipe Co. Ltd., Bombay and the employees of the Wadala Factory at 1946 B. G. G. Part I at P. 1376.)

Scope of the powers of the adjudicator :—"The adjudicator appointed under the Defence of India Rules has all the powers of a Conciliator under the Trade Disputes Act, 1929. Under that Act, the adjudicator is not merely a Court, but he has to exercise the powers of a Conciliator under section 7 of that Act. It is his duty to endeavour to bring about a settlement of the disputes, and in doing so he may bring about a settlement of all such

disputes as may be referred to him for the purpose of inducing the parties to settle the dispute. The adjudicator is not a Court of law and he is not bound to apply the law. He is a Conciliator and his duty is to bring about a settlement of the disputes. He is not a Court of law and he is not bound to apply the law. He is a Conciliator and his duty is to bring about a settlement of the disputes.

74. (1) The arbitrator, Labour Court or Industrial Court, as the case may be, shall forward Notice of award to parties. copies of the award made by him or it to the parties, the Commissioner of Labour and the Registrar.

(2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose and shall publish it in such manner as may be prescribed.

Cf. Old Law :—This section substantially reproduces the provisions in section 50 of the Bombay Industrial Disputes Act, 1938, except that instead of sending notice of the award to the parties and forwarding copies to the Registrar and the Labour Officer, copies are to be forwarded to the parties, the Commissioner of Labour and the Registrar.

75. The award shall come into operation on the Date on which award shall come into operation. date specified in the award or where no such date is specified therein on the date on which it is published under section 74.

76. The arbitration proceeding shall be deemed to Completion of arbitration proceeding. have been completed when the award is published under section 74.

Cf. Old Law :—Sections 75 and 76 reproduce the provisions in sections 51 and 52 of the Bombay Industrial Disputes Act, 1938, except that the date when the award is to come in force, in case no date is specified therein, shall be the date of its publication and not the date when it is registered by the Registrar.

CHAPTER XII.

Labour Courts.

Introductory :—"The provisions relating to the Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and cause serious loss of production and

workers' earnings. The 'conciliation procedure in the Bombay Industrial Disputes Act, 1938, had not been found to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this is sought to be found in the Labour Courts which are constituted under this Act, to ensure impartial and relatively quick and final decisions in references regarding illegal changes, illegal strikes and illegal lock-outs and the complaints that either side may bring up. '*

The decision of the Labour Courts are made appealable to the Industrial Court, which also exercises a power of superintendence over them. The Industrial Court will, therefore, be relieved of much petty work and will be left free to function as an appellate authority, to decide disputes and matters referred to it under this Act, and to give an authoritative interpretation of the Act.

77. The territorial jurisdiction of Labour Courts shall extend to the local areas for which they are constituted.

Territorial
jurisdiction.

Constitution of Labour Courts :—(See commentary under section 9.)

Territorial jurisdiction :—The territorial jurisdiction of a Labour Court extends under section 78 (2) to the local area for which it is constituted. It can take cognisance of offences committed within its local jurisdiction only.

78. (1) A Labour Court shall have power to—

Powers of Labour
Court.

A. decide —

(a) disputes regarding—

(i) the propriety or legality of an order passed by an employer under the standing orders;

(ii) the application and interpretation of standing orders;

(iii) any change made by an employer or desired by an employee in respect of

an industrial matter specified in Schedule III and matters arising out of such change ;

(b) industrial disputes—

(i) referred to it under section 71 or 72 ;

(ii) in respect of which it is appointed as the arbitrator by a submission ;

(c) whether a strike, lock-out, or any change is illegal under this Act ;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment ;

C. require any employer to—

(a) withdraw any change which is held by it to be illegal, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.

(2) Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanation. —A dispute falling under clause (a) of paragraph A of sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

79. (1) Proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be commenced on an application made by

Commencement of
proceedings.

any of the parties to the dispute, a special application under sub-section (3) of section 52 or an application by the Labour Officer and proceedings in respect of a matter falling under clause (c) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer.

(2) Every application under sub-section (1) shall be made in the prescribed form and manner.

(3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be made—

- (a) if it is a dispute falling under sub-clause (i) or (ii) of the said clause, within three months of the arising of the dispute ;
- (b) if it is a dispute falling under sub-clause (iii) of the said clause, within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of section 42.

(4) An application in respect of a matter falling under clause (c) of paragraph A of sub-section (1) of section 78 shall be made within three months of the commencement of the strike or lock-out or of the making of the illegal change, as the case may be.

POWERS OF A LABOUR COURT

Cf. Old Law :—Under section 53 (8) of the Bombay Industrial Disputes Act, 1938, the Industrial Court was to decide whether a strike or a lock-out or a change is illegal under the provisions of the Act, which power is now vested in a Labour Court under section 78 (1) A (c). Besides this, a Labour Court is invested with special criminal jurisdiction and has additional powers of deciding disputes, and of requiring an employer to effect any change or withdraw any illegal change. Under the Bombay Industrial Disputes Act, 1938, after getting the declaration of illegal change by the Industrial Court, the employee could only

secure conviction of the employer for an illegal change, but he could not ask the court to require the employer to withdraw such illegal change or effect the desired change. Also the power of trying offences under that Act was not vested in the Industrial Court, but in other Magistrates, specially empowered for the purpose.

1. Power to decide disputes :—

(a) *Propriety or legality of the order*:—Under the Bombay Industrial Disputes Act, 1938, it was held that it was not open to the court to sit in appeal over the judgment of the Manager and to pronounce upon the rightness or wrongness of his action (App. No. 148 of 1943; App. No. 203 of 1943) or to go into the question whether there was sufficient material before the Manager to justify the passing of the order of punishment and whether the circumstances justified the passing of the order. All that the Court had to see was whether the procedure prescribed in the standing orders had been followed (App. Nos. 142, 148 and 195 of 1943). In case of discharge it was held that it was not open to the court to go into the question whether the reason assigned in the discharge order was sufficient or insufficient, valid or invalid, good or bad, true or untrue, as it would amount to questioning the discretion of the Manager. The court had only to see whether the formalities required for discharge had been complied with, and it could not go further and decide whether the reason itself was a reason at all or not (App. Nos. 146, 154 and 155 of 1943; App. No. 8 of 1944). In case of suspension or dismissal this absolute, unfettered discretion of the Manager was tried to be controlled by holding that though the Court could not go into the question of sufficiency or otherwise of the reason for punishment, it could determine whether the alleged reason was a reason at all, and in particular, carelessness for two days in bringing about damage could not amount to habitual negligence or neglect of work and there being no misconduct it could not be a reason at all for punishment (App. No. 145 of 1943). This position arose because discharge was construed not as punishment as such, but merely as an incident of the conditions of service. It could be resorted to for any reasons like "having no work" (App. No. 146 of 1943), or "the employee was undesirable or the Company did not wish to keep him in service" (App. Nos. 165 to 191 of 1943). It was, therefore, not restricted to reasons which amounted to misconduct for which alone punishment was given. The Court was not concerned with notice or compensation.

This Act brings some check on this discretion and empowers the Court to pronounce its decision not only upon the legality of the order, but also upon the propriety of the order. It will be now open for the Court to sit in appeal over the judgment of the employer, and to pronounce its decision upon the rightness or wrongness of the action taken by the employer, and to see whether there was sufficient material before the employer to justify the passing of the order, and whether in the circumstances the order was just and proper.

(b) *Application and interpretation of standing orders :—* Under the Bombay Industrial Disputes Act, 1938, there was no express provision for this purpose. The Labour Court will now have the power to decide any dispute whether a particular case or matter is covered by the standing order or not, and in what sense the particular standing orders are to be interpreted.

The Labour Court will have power to decide all disputes relating to the operation, application or interpretation of standing orders. Such dispute is deemed to arise when the employee in the prescribed manner approaches the employer with a request for a change in any order passed by him or in any industrial matter arising from the application or interpretation of standing orders, and if no agreement has been arrived at within the prescribed period in respect of such order or matter. (See *Explanation* in section 78.)

(c) *Regarding change in an industrial matter in Schedule III and matters arising therefrom:—* Schedule III has been newly enacted to provide for matters which would affect health, safety, and welfare of the employees, their conditions of work, their employment, their right to compensation for involuntary stoppages, their union activities and their rights under awards, agreements and settlements and grievances which would require immediate redress. Regarding these industrial matters, the employer is entitled to effect any change without any notice of change under section 42 (1). The employees also if they desire such a change are not required to give a notice of change, but to approach the employer in the prescribed manner with a request for the change under section 42 (4). If after the employees have approached the employer in the prescribed manner with a request for such change and no agreement is arrived at in the prescribed manner, there is a dispute in respect of such change, and a Labour Court will have power to decide such dispute regarding such change and matters arising therefrom under section 78 (1) (A) (a) (iii).

2. Power of arbitration :—Under section 78 (1) (A) (b) a Labour Court is empowered to decide industrial disputes in respect of which it is appointed as the arbitrator by a voluntary submission of the parties under section 66; or even irrespective of their consent where no provision is made in any submission for the appointment of the arbitrator or where no arbitrator is appointed and the Provincial Government refers the dispute under section 71 to its compulsory arbitration, or when a dispute between employees and employers is so referred under section 72 to its compulsory arbitration. The Provincial Government cannot refer disputes under section 73 to a Labour Court, which can be referred to the compulsory arbitration of the Industrial Court alone. In these cases, all that the Court is to see is whether the dispute is an industrial dispute, which is *sine qua non* for the exercise of its jurisdiction (Cf. Ref. No. 1 of 1946—F. B.).

3. Power to decide whether a strike, lock-out or any change is illegal :—Under section 55 (8) of the Industrial Disputes Act, 1938, this power vested in the Industrial Court, which is now transferred to a Labour Court under section 78 (1) (A) (c).

4. Special criminal jurisdiction :—Labour Court has been also invested under section 78 (1) (B) and (2) with criminal powers to try offences punishable under this Act, committed within the local limits of its jurisdiction, and also to determine the amount of compensation and to order its payment, when it can be awarded on conviction.

5. Power to order the employer to withdraw an illegal change or carry out any change :—Under section 78 (1) (C) a Labour Court is further empowered to compel any employer to withdraw any change which is held by it to be illegal, or to carry out any change, provided such change is a matter in issue in any proceeding before it under this Act. It is necessary that the change required to be carried out by the employer must be a matter in issue before it in a proceeding under this Act. If, for instance, it is appointed as an Adjudicator by the Government under Rule 81 A of the Defence of India Rules, it cannot order such change to be effected.

Effect of the orders of a Labour Court :—A Labour Court, unlike the Industrial Court, under the Bombay Industrial Disputes Act, 1938, is not only authorised to declare an illegal change, illegal strike or illegal lock-out, but it can convict the

offender under this Act and sentence him and order compensation as well, in criminal proceedings instituted before it. It can also compel the employer to withdraw an illegal change, and order him to carry out any change which is in issue in any proceeding under the Act before it. If the employer fails to comply with such requirement within the time specified or where no time is prescribed within forty eight hours of the giving or making of the decision or order as provided in section 47, he shall be punishable under section 106 (2) with imprisonment which may extend to three months, or for every day on which such non-compliance continues with a fine which may extend to Rs. 5000/- or with both, with an additional liability to pay compensation as ordered under section 106 (3) to the employee directly and adversely affected thereby. This ensures a proper compliance with the orders of a Labour Court.

COMMENCEMENT OF PROCEEDINGS

Section 79 provides for the commencement of the civil proceedings in a Labour Court, and section 82 provides for cognizance of offences. In dealing with the powers of a Labour Court the various types of matters to which it will have to apply its mind have been treated. The questions as to the commencement of and limitation for proceedings in respect of these matters can be considered as under.

(i) **Arbitration proceedings** :—Industrial matters can be referred voluntarily by the parties to the arbitration of a Labour Court by a submission under section 66 or under section 58 (5), or by the Provincial Government compulsorily, irrespective of the consent of the parties under section 71 or 72.

(ii) **Disputes relating to operation etc. of standing orders or changes in industrial matters in Schedule III** :—Under section 79 (1) and (2) proceedings in respect of these disputes falling under section 78 (1) (A) (a) shall be commenced by an application in the prescribed form and manner by any of the parties to the dispute, or when the Joint Committee has failed to arrive at an agreement in respect of such change, by a special application under section 52 (3) by the employer or the union, within seven days from the receipt of the decision of the Joint Committee, or by an application by the Labour Officer. The Provincial Government may also make a reference to Labour Court under section 40 for a decision of disputes of this nature.

Period of limitation :—The period of limitation, as regards

disputes regarding change in respect of matters in Schedule III or matters arising therefrom, is three months from the date of last approach to the employer with a request for such change. As regards other disputes, arising from the operation, application or interpretation of standing orders, it is three months of the arising of the dispute on the expiry of the prescribed period within which the agreement was to be arrived at after the employee approached the employer with the request for a change (See section 79 (3).)

(iii) **Declaration of illegal change, illegal strike or illegal lock-out** :—Under section 79 (1) and (4) an application for a decision of an illegal change, illegal strike or illegal lock-out under section 78 (1) (A) (c) shall be made by any employer or employee directly affected or the Labour Officer within three months of the making of the illegal change or the commencement of the strike or lock-out.

Cf. Old Law :—Under section 55 of the Bombay Industrial Disputes Act, 1938, there was no period of limitation for such application and the application could be made also by a representative of employees concerned, and instead of the words "directly affected" the word "concerned" was used. The effect of the change would be that now a representative of employees cannot present such an application. Also as the definition of employee is made more extensive under this Act so as to include even contractor's employees and even dismissed employees, alongwith the discharged employees as under the previous definition, their right to present the application will not be questioned under the Act.

Employee directly affected :—

(a) *Directly affected* :—The term "employee concerned" under section 55 of the Bombay Industrial Disputes Act, 1938, was generally interpreted as an employee directly affected by the change, or the person who was said to have been wrongly treated (App. No. 158 of 1943), or who was concerned in the observance of the terms of any award, agreement or settlement (App. No. 218 of 1943-F. B.). When a settlement is in force between the employer and the general body of workers, it is not necessary that the application should be made only on behalf of the general body of workers by their elected representatives and any employee concerned in the observance of its terms or the Labour Officer may make the application, but the declaration will be granted only in respect of the party applying (App. No. 218 of 1943-F. B.). Where certain permanent operatives filed an application for an illegal change on the

ground that certain persons who should be treated as permanent in view of the nature of work done had been treated as temporary operatives, the persons concerned are those operatives who have been wrongly treated as temporary operatives, and they alone can file such application. It was further held that the applicants were not indirectly affected in so far as the mill would thereby be able to increase the number of permanent operatives within the meaning of item (2) of Schedule II, for under the Bombay Industrial Disputes Act, 1938, the said item (2) referred to a demand for increase, which was not in the present case, and at any rate the application was not based on that count (App. No. 158 of 1943).

In the light of this decision the effect of the present amendment by the use of the words " directly affected " instead of the words " concerned ", seems to be to exclude those who are " indirectly affected ". The persons who are indirectly affected will have no *locus standi* to present such application.

(b) *Discharged or dismissed employee* :—The expression " and includes a person who has been dismissed or discharged from employment on account of any dispute relating to a change in respect of which a notice is given or an application is made to the Labour Court under section 42 " in section 3 (13) (b), clearly shows that all persons discharged or dismissed for other reasons are excluded from the term " employee " and so they cannot file an application for a declaration of an illegal change, etc. (App. No. 87 of 1944—F. B.). A discharged employee has, therefore, no *locus standi* to complain of illegal change on the ground of reduction in the number of employees (App. No. 16 of 1941 ; App. No. 28 of 1941 ; App. No. 112 of 1945) ; or on the ground of short payment of dearness allowance (App. No. 76 of 1945) ; or on the ground that grant of bonus with conditions attached thereto was illegal (App. No. 87 of 1944—F. B.). If the employee has ceased to be the employee and his name is not on the muster roll at the date on which the application is received by the Court, he cannot present such application (App. Nos. 113 and 114 of 1945).

(c) *Representative of employees* :—Under section 55 of the Bombay Industrial Disputes Act, 1938, a representative of employees concerned could present an application, and therefore, a Representative Union of which the persons directly affected by the change were members could present the application (App. No. 13 of 1945). But now under this Act only the employee concerned or the Labour Officer can file the application, and it seems that the representative of employees cannot do so.

(d) **Contractors' men** :—Under section 3 (13) contractors' men are included in the definition of an employee, unless the work to be executed is not ordinarily a part of the undertaking ; and so the old controversy, as to whether they are employees or not, does not now survive, practically, except in case of extraordinary kind of work to be executed.

Period of limitation :—Under the Bombay Industrial Disputes Act, 1938, there was no period of limitation, but it was held that an application for a declaration of illegal strike should be filed immediately after the strike had commenced or in any case soon after it was over. It was also observed that though the employer was legally justified in filing such application during the pendency of conciliation proceedings, it was very desirable that no such application should be made when the dispute was before the Conciliator after resumption of work, for otherwise workers might regard it as a threat for enforcing conciliation (App. No. 47 of 1946).

This Act provides in section 79 (4) a limitation of three months, from the making of the change or the commencement of the strike or lock-out, after which no application can be entertained.

(iv) **Cognizance of offences** :—Under section 82 a Labour Court can take cognizance of an offence punishable under the Act committed within the local limits of its jurisdiction, only on the complaint by the person affected of facts constituting such offence, or on a written report by the Labour Officer.

Jurisdiction of the Labour Court or the Industrial Court :—(a) **Application for declaration and injunction** :—There is no provision in the Act whereby the Court is empowered to grant a declaration to the effect that certain employees are not duly elected or to grant injunction restraining them from representing themselves as elected representatives for the purpose of notices of change (App. No. 38 of 1942). Also the powers of the Court as detailed in section 78 do not include the power to grant a declaration that the dismissal of certain employees of a registered union constitutes a breach of the provisions relating to victimization (App. No. 57 of 1940). But under this Act the applicant may pray for an order of the Court requiring the employer to withdraw any illegal change, or carry out any change which is desired to be made by such application.

(b) **Industrial disputes** :—No limitation as to its origin in a civil or contractual right :—Industrial dispute is the *sine qua*

non or the criterion test to be applied for the exercise of the jurisdiction by these Courts. It is in order to give opportunities to the parties to settle their disputes amicably before resorting to a strike or lock-out that the elaborate machinery of the Act has been devised, and the operation of the Act is not confined to disputes which have their origin in a civil or contractual right as it would make the whole Act infructuous for all practical purposes (Sub. No. 1 of 1945-F.B.). A demand for something which cannot be enforced in a Court of Law can be adjudicated in these Courts, if it relates to an industrial matter (Ref. No. 1 of 1945-F.B.). In another case it was held that it cannot be said that if a matter is covered by the standing orders no demand can be made by the workers for any loss which they might suffer due to the operation of the standing orders. It was held that although the workers might not be entitled to demand wages during the period of stoppage for reasons beyond the control of the employer as that matter would be covered by the standing orders, there was nothing to prevent them from demanding compensation for the loss of their earnings, and the Court would have jurisdiction to determine such an industrial dispute. Similarly it was observed that a demand for reinstatement by an employee lawfully discharged under standing orders is an industrial matter; and the Court has jurisdiction to determine it (Sub. No. 4 of 1946-F.B.). It may be noted that Schedule III under this Act expressly covers reinstatement and compensation due to stoppages as an industrial matter for a change in which the remedy by application to a Labour Court is specifically provided. Sir Harsiddhbhai Divatia in an interview reported in the "Times of India," dated 2nd April, 1947, observed, "The Industrial Court is not restricted to legal points, but it decides questions on equitable considerations as to what is just and fair between the parties. Grant of bonus, although from the stand point of civil law is only an *ex-gratia* payment, is regarded as an industrial matter, and therefore, an industrial right, which the Court can grant on fair and equitable grounds and not merely on basis of legal rights. In questions of wages and dearness allowance the Court always takes into consideration equity and justice and not merely questions of legal rights."

Procedure before the Labour Courts :—(See commentary under section 80.)

Ancillary Powers of the Labour Courts during the proceedings :—(See commentary under section 80.)

Appeal against decision of the Labour Courts :—
(See commentary under section 84.)

Superintendence over Labour Courts by the Industrial Court :—(See section 85.)

80. (1) On receipt of an application under section 79 the Labour Court shall summon all parties affected by the dispute to appear, and shall hold an inquiry.

Summoning of parties and procedure at inquiry.

(2) In an inquiry under sub-section (1) the Judge presiding over the Labour Court shall himself, as such inquiry proceeds, record a minute of the proceedings in his own hand, embracing the material averments made by the parties affected and the material parts of the evidence. The decision shall be signed by him and shall set forth the grounds on which it is based.

Procedure before the Labour Courts :—Sections 80 and 83 deal with the procedure to be followed by Labour Courts in any proceeding under the Act and in trials of offences.

(i) *Civil Proceedings under this Act* :—Procedure prescribed in section 80 is imperative, and the parties affected shall be summoned, and the inquiry shall be held in the prescribed manner, otherwise the decision would be vitiated.

(ii) *Trial of offences* :—In the trial of offences the Labour Courts shall follow under section 83 the procedure under the Criminal Procedure Code, 1898, for a summary trial in which an appeal lies, and the provisions of the Criminal Procedure Code, 1898, shall apply to such trial.

Powers of the Labour Court in the conduct of the proceedings :—

(i) *Powers of a Court* :—The Labour Courts shall have the same powers as are vested in Courts in respect of matters specified in section 118.

Powers in respect of trials :—In respect of offences punishable under the Act, under section 83, the Labour Courts shall have all the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and of the First Class Magistrate elsewhere.

(iii) *Power of reference to Industrial Court* :—Under section 81 a Labour Court may refer any question of law arising in any proceeding before it to the Industrial Court for decision, and it shall pass orders in accordance with such decision.

(iv.) *Decision cannot be called in question* :—Except as otherwise provided by this Act, under section 86 no decision, award or order of a Labour Court shall be called in question in any proceeding in any Civil or Criminal Court. Appeal against such decision lies only in cases provided in section 84 (1).

Sine die adjournment :—On a *sine die* adjournment being sought on the ground that the applicant had joined the army, it was held that as section 6 of the Indian Soldiers Litigation Act V of 1925 had no application, when the applicant was represented by a lawyer capable of prosecuting the application, the application could not be adjourned *sine die* (App. No 118 of 1943).

Compromise :—Where parties file an agreement in the Court the application shall be disposed of in terms of the agreement (App. No. 161 of 1943 ; App. Nos. 22 and 32 of 1944).

Dismissal :—The application was dismissed (i) when the applicant was absent though duly informed and his pleader retired (App. No. 62 of 1943) ; (ii) when it was not pressed (App. No. 68 of 1943) ; (iii) when the employees had acted on the assurance of the withdrawal of the application and had called off the strike (App. No. 20 of 1943).

Withdrawal :—It was observed in App. No. 20 of 1943, " It is submitted that even if the manager had given an assurance of withdrawal of the application, it would have no effect in law for neither Agent nor the Manager of the Mills has any authority to compound offences. This submission has no force. This is an application under the Bombay Industrial Disputes Act, 1938, and if a person who has made it wishes to withdraw it, there should be no objection whatsoever to allowing him to withdraw it. There is no question of compounding of offences and section 345 of the Code of Criminal Procedure, 1898, has nothing to do with such a withdrawal ". It was, therefore, held that as the applicant Mills had given an assurance to the opponent employees that if they abandon the strike the application would be withdrawn, the application could not lie and must be dismissed. It may be noted that if a mere undertaking was given not to proceed against the workers if they went back to work, it cannot alter the merits of the case, and the

action of the workers must be declared to be an illegal strike (App. No. 219 of 1943).

Ex parte applications :—If no written statement is filed by the opponent, nor any appearance is put in even at the time of hearing, the Court may act on the applications duly verified and allow them (App. Nos. 8 and 28 of 1943).

Reopening of decided matters :—A fresh application by a different set of workers who are dissatisfied with the orders of the Court on precisely the same subject-matter which was the basis of similar applications, which were filed by another set of workers belonging to the same department, is clearly not maintainable. The hearing of such application would be tantamount to reopening the matters already decided, for which there is no provision in the Act (App. No. 73 of 1945).

No strike or change at the date of hearing :—The fact, that at the time of hearing of the application for declaration of an illegal strike, the strike had ended, does not oust the jurisdiction of the Court. The material date is the date on which the application is made, and not when its hearing takes place. There is nothing in the Act to show that the strike must be in existence on the date of hearing (App. No. 2 of 1940). Cessation of work even for a short time would amount to a strike (App. No. 23 of 1943), even though soon after, the workers may have resumed work (App. No. 119 of 1944). On the same reasoning it was held that non-payment of dearness allowance on the due date constitutes an illegal change, although the same is subsequently paid (App. No. 1 of 1943; App. No. 22 of 1942).

Declaration of a number of illegal changes when more operatives are affected :—The circumstance that a plurality of persons may be affected by an offence is not conclusive that more than one offence has been committed. If the operatives desire that the employer should be punished for each individual act affecting each individual operative it is incumbent on them to secure from the Court order or orders that a number of illegal changes corresponding to the number of operatives affected have been made. Under section 59 (a) of the Bombay Industrial Disputes Act, 1938, (corresponding to section 94 (a) of this Act) the parties are bound by the order of the Court when it declares that "It is an illegal change", and it is not open to read a plural when the Court declares it in singular (Criminal Revision App. No. 145 of 1945—per Weston and Baydekar JJ.).

Declaration of Illegal strike against some strikers alone when no concerted action :—The Court has power to give its decision about the illegality of the strike which may be binding on some if not all the employees ; so it is not necessary that all the employees should be made parties when it decides that the strike is illegal only with regard to the employees who are served to appear before it (App. No. 2 of 1940). Where only two hundred strikers acted in concert and demanded that the Muslim workers should not be continued in employment, and the remaining thirty five hundred workers, who also had not started work, were in favour of amicably settling the matter and had held a meeting to adopt a resolution that work should be resumed jointly in collaboration with the Muslim workers, cessation of work could not be due to any alleged common understanding. So if the persons who are joined as parties are not shown to represent those two hundred workers, whose names cannot be ascertained, no declaration of illegal strike can be given, although the action of those two hundred workers came within the definition of a strike (App. No. 64 of 1946).

Representation of parties :—(See commentary under that heading under sections 32-33.)

Individual appearance :—(See commentary under that heading under sections 32-33.)

81. A Labour Court may refer any question of law arising in any proceeding before it to the Industrial Court for decision. Any order passed by the Labour Court in such proceeding shall be in accordance with such decision.

82. No Labour Court shall take cognizance of any offence except on a complaint by the person affected of facts constituting such offence or on a report in writing by the Labour Officer.

83. In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence shall follow the procedure laid down in Chapter

XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

84. (1) Notwithstanding anything contained in section 83 an appeal shall lie to the Industrial Court—
Appeals.

- (a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub-section (1) of section 78, except to the extent to which it determines whether a strike or lock-out was illegal or not or a decision of such Court under paragraph C of sub-section (1) of the said section.
- (b) against a conviction by a Labour Court by the person convicted;
- (c) against an acquittal by a Labour Court in its special jurisdiction, by the Provincial Government;
- (d) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the Provincial Government.

(2) Every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence, as the case may be :

Provided that the Industrial Court may for sufficient reasons allow an appeal after the expiry of the said period.

Appeals :—An appeal lies against all decisions of the Labour Courts, except against awards, and decisions as to whether a strike or lock-out is illegal or not.

Limitation period for an appeal :—Under section 84 (2) every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence as the case may be, unless for sufficient reasons the Industrial Court allows it thereafter.

85. The Industrial Court shall have superintendence over all Labour Courts and may—
 Industrial Court to exercise superintendence over Labour Courts.

- (a) call for returns;
- (b) make and issue general rules and prescribe form for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and, in particular, for securing the expeditious disposal of cases;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;
- (d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

86. Except as otherwise provided by this Act, no decision, etc., of Labour Court not to be called in question.
 decision, award or order of a Labour Court shall be called in question in any proceeding in any civil or criminal Court.

Decision of Labour Courts not questionable :—

Except to the extent provided in section 83 for appeals, no decision, order or award of a Labour Court shall be called in question in any proceeding in any civil or criminal Court. It is not open to review. (See commentary under section 95.)

CHAPTER XIII.

Court of Industrial Arbitration.

Introductory :—The Bombay Industrial Disputes Act, 1938, for the first time constituted a permanent official machinery for arbitration to decide industrial disputes referred to it. It was known as the Industrial Court. Such a permanent tribunal had obvious advantages as it eliminated delay which occurred in constituting *ad hoc* bodies and as it acquired by experience a great intimacy with intricate industrial problems.

The present Act provides for two distinct kinds of Labour Tribunals—

(i) *Labour Courts* :—To ensure relatively quick decisions in disputes relating to the operation, application and interpretation of standing orders, or regarding changes in industrial matters specified in Schedule III; for declaration of illegal changes, illegal strikes or lock-outs; for deciding matters referred to its arbitration; and for trial of offences punishable under the Act, powers are vested in the Labour Courts.

(ii) *Industrial Court* :—The Court of Industrial Arbitration is to exercise mainly appellate jurisdiction from the decisions of Labour Courts, the Registrar and the Commissioner of Labour. It will further decide industrial disputes referred to its arbitration or matters referred to it, by the Conciliator or Board of Conciliation, by the parties, by the Provincial Government, by a Civil, Criminal or Labour Court or by the Commissioner of Labour.

Scope and jurisdiction of the Industrial Court :—

(See commentary under that heading under sections 78-79.)

87. It shall be the duty of the Industrial Court—

Duties of
Industrial Court.

- (a) (i) to decide appeals under section 20 or 44 from orders passed by the Registrar;
- (ii) to decide appeals from the decision of the Commissioner of Labour under section 36 or 39 and revision applications under section 37 regarding standing orders;
- (iii) to decide disputes referred to it under sub-section (6) of section 58;
- (iv) to decide all matters which may be referred to it by a Conciliator or a Board under section 61 or by an arbitrator under section 69;
- (v) to decide industrial disputes referred to it in accordance with submission registered under section 66 which provide for such reference to the Industrial Court;

- (vi) to decide industrial disputes referred to it under section 71, 72 or 73;
 - (vii) to decide matters referred to it under section 90;
 - (viii) to decide questions relating to the interpretation of this Act or rules made thereunder and standing orders referred to it under section 91;
 - (ix) to decide references made to it under section 99;
 - (x) to decide such other matters as may be referred to it under this Act or the rules made thereunder;
- (b) to decide appeals made under section 84 from a decision of a Labour Court.

DUTIES OF INDUSTRIAL COURT

Constitution of Industrial Court :—(See commentary under section 10.)

*Cf. Old Law :—*The corresponding section 53 of the Bombay Industrial Disputes Act, 1938, has been substantially recast so as to make the Industrial Court an appellate court and a court of Industrial Arbitration in important disputes.

1. Appeal :—The Industrial Court shall decide under section 87 (a) (i) (ii) and (b) the following appeals :—

- (a) *from orders of Registrar*—under section 20 or 44;
- (b) *from decisions of Commissioner of Labour*—against decisions settling standing orders under section 36 or altering them under section 39;
- (c) *from decisions of Labour Court*—against decisions other than an award or a decision of an illegal strike or illegal lock-out.

2. Review :—Under section 87 (ii) the Industrial Court shall decide an application for review under section 37 of its decision in appeal, against standing orders as settled or altered by the Commissioner of Labour under section 36 or 39.

It may be noted that the word "revision" has been inadvertently used in section 87 (ii), which should be "review" as provided under section 37.

3. Reference :—Under section 87 (iv), (vii), (viii), and (ix) the Industrial Court shall decide the following references :—

(a) *by a Conciliator or a Board or an Arbitrator*—under section 61 or 69 ;

(b) *by a Civil or Criminal Court*—under section 90 (1);

(c) *by a Labour Court*—under section 81 ;

(d) *by the Commissioner of Labour*—under section 91.

Section 91 does not mention interpretation of "standing orders", for it has been left to the jurisdiction of Labour Courts, and it seems "standing orders" have been inadvertently included in section 87 (viii).

(e) *by the Provincial Government*—(i) for a declaration whether any proposed strike or lock-out of which a notice has been given would or would not be legal under section 99 ; or (ii) on any point of law arising in any proceedings held under this Act under section 90 (2) ; or (iii) of a dispute specified in section 78 (1) (A) (a) under section 40 (2) ;

(f) or of such other matters as may be referred to it under this Act or the rules made thereunder.

4. Arbitration :—Under section 87 (v) and (vi) the Industrial Court shall decide industrial disputes submitted to its arbitration voluntarily under section 66 or by the parties under section 58(6) at any stage of conciliation, or which are referred to its compulsory arbitration under section 71, 72 or 73 by the Provincial Government.

88. (1) The Industrial Court in appeal may confirm, modify, add to or rescind any decision or order appealed against and may pass such orders therein as it may deem fit.

Powers of
Industrial Court.

(2) In respect of offences punishable under this Act, the Industrial Court shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898.

(3) A copy of the orders passed by the Industrial Court shall be sent to the Labour Court.

89. If in any proceeding the Industrial Court finds that any union was registered by reason of Cancellation of registration of union. a mistake, misrepresentation or fraud, or that a registered union has contravened any of the provisions of this Act, the Industrial Court may direct that the registration of such union shall be cancelled.

Cf. Old Law:—Section 88 is new, and section 89 substantially reproduces section 54 of the Bombay Industrial Disputes Act, 1938.

Powers of Industrial Court:—

(i) *Of appeal, review, reference and arbitration* :—These have been discussed under the heading of "Duties of the Industrial Court" under section 87. (See also section 88 (1) for appellate powers.)

(ii) *Powers of Courts regarding witness-summons, etc.* :—The Industrial Court shall have the same powers as are vested in courts in respect of matters specified in section 118.

(iii) *Criminal powers* :—(See section 88 (2).)

(iv) *Of superintendence over Labour Courts* :—(See section 85.)

(v) *Of awarding costs* :—Section 92 (5) provides for the power of awarding costs and section 93 provides for execution of the order of costs. Cost of the services of a legal adviser cannot be awarded.

(vi) *Cancellation of registration of an union* :—The Industrial Court may under section 93 cancel the registration of an union.

(vii) *Rules of Procedure* :—Under section 92 (1) the Industrial Court shall have the power of making regulation and rules to regulate its procedure.

90. (1) A civil or criminal Court may refer any matter or any issue in any suit, criminal Reference on point of Law. prosecution or other legal proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by such Court in such suit, prosecution or legal proceeding shall be in accordance with such decision.

(2) The Provincial Government may refer to the Industrial Court any point of law arising in any proceedings held under this Act. The Industrial Court shall not decide any such reference save in open Court and with the concurrence of a majority of the members of the Court present at the hearing of the reference.

91. The Commissioner of Labour may refer any Reference regarding interpretation of Act and Rules. question relating to the interpretation of this Act or the rules made under this Act to the Industrial Court for its decision.

Reference :—Sections 90 and 91 deal with reference to the Industrial Court. (See commentary under the heading "Reference," under section 87.)

92. (1) The Industrial Court shall make regulations consistent with the provisions of this Procedure before Industrial Court. Act and the rules made thereunder regulating its procedure.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the formation of Benches consisting of one or more of its members and the exercise by each such Bench of the jurisdiction and powers vested in it:

Provided that no Bench shall consist only of a member who has not been, and at the time of his appointment was not eligible for appointment as, a Judge of a High Court.

(3) Every regulation made under sub-section (1) or (2) shall be published in the *Official Gazette*.

(4) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

(5) The Industrial Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid:

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

93. An order made by the Industrial Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Cf. Old Law:—Sections 57 and 58 of the Bombay Industrial Disputes Act, 1938, are substantially reproduced in these two sections read with section 118. The present section 92 (1) additionally provides for making regulations which will be published in the *Official Gazette* under sub-section (3) thereof; and sub-section (2) provides for regulations for constitution of Benches which was provided for by rules under section 24 (3) of the Bombay Industrial Disputes Act, 1938.

94. An order, decision or award of the Industrial Court shall be binding on—

Parties on whom
order of Industrial
Court binding.

- (a) all parties to the industrial dispute who appeared or were represented before it;
- (b) all parties who were summoned to appear as parties to the dispute whether they appeared or not, unless the Industrial Court is of opinion that they were improperly made parties;
- (c) in the case of an employer who is a party to the proceeding before such Court in respect of the undertaking to which the

dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates; and

- (d) in the case of a registered union which is a party to the proceeding before such Court, all persons represented by the union at the date of the award, as well as thereafter.

Cf. Old Law :—This section substantially reproduces the provisions of section 59 of the Bombay Industrial Disputes Act, 1938, except for the substitution of the words "all persons represented by the union" in clause (d) instead of the words "all persons who were members of the union," as the range of activities of a registered union is enlarged by enabling it to act as a representative of employees even on behalf of non-members when it is a Representative Union or when it is authorised in the prescribed manner for the purpose of representing them. Also the words "order, decision or award" have replaced the word "order" for the sake of clarity. It seems that in clause (d) the words "order, decision or" have been inadvertently omitted before the word "award", which will have to be supplied for the sake of exactness.

There is another section 115 which purports to provide for the binding effect of the order or decision of the Industrial Court, which is not only redundant but which is likely to introduce an inconsistency by restricting the operation of the section only to the present or future members of the union, even when it represents non-members when it acts as the representative of employees. (See commentary under sections 114–115, under the heading "Binding effect of the order, decision or award of the Industrial Court".)

Parties on whom the order, decision or award shall be binding :—The order, decision or award of the Industrial Court shall be binding on the persons specified in sections 94 and 115.

Parties :—Therefore, the order of the Industrial Court shall be binding on all parties who appeared or were represented before it and all parties who were summoned to appear, whether they appeared or not, unless they were improperly joined. It was observed in one case that no rules were framed under the Bombay Industrial Disputes Act, 1938, as to how summonses were to be served on all the employees, and how they were to make their appearances. It was doubtful whether the Labour Officer made his appearance

in his representative capacity when he had not been made a party in such capacity. Therefore, in case of an illegal strike the order was made binding on the nine employees who had been individually summoned to appear as parties, for it was not considered necessary that all the employees who had been made the opponents should be before the Court (App. No. 2 of 1940).

In another decision it was held that if a submission is made binding upon other mills not parties to it by the Government in exercise of powers under section 114 (2), but they are neither summoned to appear and they do not appear nor are they represented when the submission is heard, the award made on that submission cannot be regarded as binding upon such other mills, and contravention of the award by such mills would not be an illegal change (*Cf.* App. No. 17 of 1940-F.B.).

Representatives in interest :—It will further bind the heirs, successors or assigns of the employer and persons represented by the union at the date of the order or thereafter. In case of the registered union which is a party, it will therefore, bind all present and future members as well as non-members who are represented by such a union or who have authorised such a union to represent them.

95. No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court.

Order of Industrial Court not liable to appeal or review.

Cf. Old Law :—This section substantially reproduces section 60 of the Bombay Industrial Disputes Act, 1938, except for the addition of words "decision or award" after the word "order" so as to clear any doubt which might be raised whether the section should apply to decisions and awards of the Industrial Court as well.

Order, decision or award of the Industrial Court cannot be called in question :—The Act provides that Industrial disputes of the types mentioned in it should be decided by the Court of Industrial Arbitration, composed of Judges specially qualified and experienced for deciding such disputes, rather than leave them to be decided by the ordinary civil and criminal Courts. It is provided that such decision shall not be open to appeal or review (except in case of a decision in appeal by the Industrial Court against standing orders as settled or altered by the Commissioner of Labour, when it can be moved under section 37 to review its decision); and it cannot be called into question in any

civil or criminal Court, whether it is right or wrong. A similar provision in section 86 provides that a decision, award or order of a Labour Court also shall not be called in question, except in appeal under section 83.

(a) *Decision whether a strike or lock-out illegal or not :—* Sections 86 and 95 prohibit the decision, whether a strike or a lock-out is illegal or not, from being called in question in any civil or criminal Court, which has, therefore, to act in accordance with such decision (46 Bombay L. R. 104 Emperor v. Khandubhai K. Desai).

(b) *Decision of "an illegal change"*—The circumstance that a plurality of persons may be affected by an offence is not conclusive that more than one offence has been committed. If the operatives desire that the employer should be punished for each individual act affecting each individual operative, it is incumbent on them to secure an order or orders that a number of illegal changes corresponding to the number of operatives affected have been made. For, otherwise, if the Court declares that "*an illegal change*" is committed, it is not open to read a plural when the Court declares it in singular (Criminal Revision App. No. 145 of 1945—*per* Weston and Bavdekar JJ.).

(c) *Use of decision of illegal change:—*If the employer wrongfully dismisses his employee, the employee may seek a decision of illegal change and get the employer convicted for committing an illegal change under section 106 (as dismissal is specifically included in Schedule II as well, which necessitates a notice of change), and may use the decision when seeking to recover through a civil Court or otherwise damages to which he may be entitled on wrongful dismissal. Under old Standing Order No. 19 such amount cannot be more than 13 days' wages (*Per*—Weston J. in Civil Revision App. Nos. 138 of 1945 and 611 of 1944 Kasambhai Kalubhai v. Manager, the Maheshwari Mills Co., Ltd., Ahmedabad).

Writ of Certiorari or prohibition against the Industrial Court or Labour Court :—In spite of the provisions of sections 86 and 95, which provide that no order, award or decision of a Labour Court or the Industrial Court shall be called in question in any civil or criminal Court, the High Court has inherent power under clause 5 of its Charter to issue a *writ of certiorari* or prohibition against such Court and to interfere with its decision or order or award, if it was shown that such Court had acted without jurisdiction or in excess of its legal authority. But merely because

a question has been wrongly decided, it cannot be said that the Court had acted without jurisdiction or in excess of its jurisdiction. (Civil App. No. 1014 of 1941 re. Kalyan Mills Ltd., Ahmedabad v. The Government Labour Officer.)

Conditions requisite for the issue of a writ of certiorari or prohibition :—Two conditions requisite for the issue of a writ of *certiorari* against a judicial Tribunal are that firstly, it must be shown that the Tribunal has acted without jurisdiction or in excess of it and secondly, the party who is affected thereby must be within the jurisdiction of the High Court. On an application for an issue of *writ of certiorari* against the Industrial Court at Bombay, calling upon it to send to the High Court the record and papers relating to the bonus demand and to quash the proceedings under the Government order of reference under section 49A of the Bombay Industrial Disputes Act, 1938, it was held—"where both parties to the proceeding, *viz.* The Textile Labour Association and The Ahmedabad Cotton Mfg. Co. Ltd., are outside the jurisdiction of the High Court, and especially where the party who is affected thereby, *viz.* The Textile Labour Association is outside jurisdiction of the High Court, it has no jurisdiction to issue the writ, even though the Tribunal against whom the writ is sought has its office within its jurisdiction (48 Bom. L. R. 76 Ahmedabad Cotton Mfg. Co. Ltd. v. Textile Labour Association).

96. The Provincial Government may direct any Officer to appear in proceeding before Industrial Court. officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given such officer shall be entitled to appear in such proceeding.

Cf. Old Law :—This section reproduces section 61 of the Bombay Industrial Disputes Act, 1938, except that the specific mention of Advocate General is omitted.

CHAPTER XIV.

Illegal strikes and lock-outs.

Introductory:—The whole scheme or the object of the present Act as that of the Bombay Industrial Disputes Act, 1938, is to provide for the promotion of peaceful and amicable settlement of industrial disputes by compulsory conciliation, except in cases where the parties have agreed to resort to or have been referred to arbitration. Therefore, all strikes or lock-outs which are resorted to without following the procedure laid down in the Act or which otherwise defeat the object of the Act are made illegal under this Chapter.

Under the present Act petty disputes regarding industrial matters enumerated in the newly created Schedule III are left to the Labour Courts for expeditious and final disposal. These Courts are given special powers to require the employer to effect the desired change or withdraw an illegal change. They are also to decide matters arising from operation, application and interpretation of standing orders. Modification of standing orders is left to be done by the Commissioner of Labour.

The Joint Committees will provide sufficient scope for discussion and negotiations. The corresponding provisions in sections 97-98 under this Act are modified, and the parties are prevented from resorting to direct action in respect of industrial matters in Schedule III or regulated by standing orders. Right to strike for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change is also withheld. Another important feature is the exemption clause that where direct action is commenced after due notice and where work is resumed or lock-out is discontinued within 48 hours of the decision of illegality, no penalty would be incurred. A new section 99 is enacted to provide for reference by the Provincial Government to the Industrial Court whether any proposed strike or lock-out of which a notice has been given is legal or not.

97. A strike shall be illegal if it is commenced
Illegal strikes. or continued—

- (a) in cases where it relates to an industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

- (b) without giving notice in accordance with the provisions of section 42;
- (c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;
- (d) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;
- (e) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings;
- (f) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;
- (g) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;
- (h) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceedings are completed, or the date on which the award of the Labour or Industrial Court, as the case may be, comes into operation, whichever is later;

- (i) in contravention of the terms of a registered agreement, or a settlement or award,

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a strike not falling under clause (a), (g), (h) or (i) of sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry, the employees who resume work within forty-eight hours of a Labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike :

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared under section 99 to be illegal.

98. (1) A lock-out shall be illegal if it is commenced or continued—
Illegal lock-outs.

- (a) in cases where it relates to any industrial matter specified in Schedule III or regulated by any standing order for the time being in force;
- (b) without giving notice in accordance with the provisions of section 42;
- (c) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is

received by the Conciliator for the industry concerned for the local area;

- (d) in cases where conciliation proceedings in respect of an industrial dispute to which a lock-out relates have commenced, before the completion of such proceedings;
- (e) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;
- (f) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;
- (g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceeding is completed or the date on which the award of the Industrial Court comes into operation, whichever is later;
- (h) in contravention of the terms of a registered agreement, or a settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months from the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a lock-out not falling under clause (a), (f), (g) or (h) of sub-

section (1) was given to the employees and the Labour Officer, and the lock-out was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry and the employer discontinues the lock-out within forty-eight hours of a Labour Court or the Industrial Court declaring such lock-out to be illegal, the employer shall incur no penalty under this Act in respect of such lock-out :

Provided that nothing in this sub-section shall apply to any lock-out which has within the period of notice been declared under section 99 to be illegal.

*Cf. Old Law :—*Sections 97 and 98 substantially reproduce the provisions in sections 62-63 of the Bombay Industrial Disputes Act, 1938. The only changes are the following :—

(i) As the standing orders have been already framed, the provisions, making strikes or lock-outs illegal, if commenced before standing orders were settled or before the expiry of one year from the date on which standing orders came into operation, are deleted.

(ii) New provision is inserted making all strikes or lock-outs illegal, if they relate to an industrial matter, in Schedule III or regulated by any standing orders in force, because these disputes are left for final disposal by the Labour Court or the Commissioner of Labour in case of alteration of standing orders.

(iii) Also because of setting up of Joint Committees for discussion and negotiations a provision is made for making strikes or lock-outs illegal, if started before special intimation of failure is sent to the Conciliator, so as to initiate conciliation proceedings without giving a notice of change.

(iv) Exemption from penalty is provided in new subsection (3) in case of strikes or lock-outs commenced after due notice, if the parties resume work within 48 hours of the decision of illegality of the action.

*Analysis:—*Strike or lock-out is illegal in the following cases:—

(1) Relating to industrial matters in Schedule III or regulated by standing orders (*i. e.* matters in Schedule I); (2) Without giving notice of change under section 42; (3) If notice of change is given, and

no agreement is arrived at, before commencement of conciliation proceedings; (4) If conciliation proceedings have commenced, before their completion; (5) If conciliation proceedings have been completed, after the expiry of two months from the completion of such proceedings; (6) If there is a submission relating to such dispute, so that no conciliation would be commenced or continued, before such submission is lawfully revoked; (7) If the industrial dispute is at any time referred to the compulsory arbitration of the Labour Court or the Industrial Court, or if the parties so agree at any stage of conciliation proceedings, before the date specified in the award for its coming into operation or the date of publication of the award, whichever is later; (8) In contravention of the terms of a registered agreement or a settlement or an award. In case of strike there is one more case, when it is resorted to only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change, for in these cases the worker has an expeditious, effective and final remedy in the Labour Court.

ILLEGAL STRIKE OR LOCK-OUT

Strike or lock-out must be proved :—Before a strike or a lock-out can be declared illegal, it must be shown that cessation of work or the closure, as the case may be, amounts to a strike or a lock-out as defined in section 3 (36) or (24). (See rulings under section 3 (17) for "Industrial Dispute", 3 (18) for "Industrial Matter", 3 (24) for "Lock-out" and 3 (36) for "Strike".)

Burden of proof :—Where cessation is admitted but the management is not told the reasons for doing so, it would be indeed impossible for the management to prove that cessation was in consequence of an industrial dispute. The burden of proving that it was not a strike on the ground that it was not resorted to in consequence of an industrial dispute lies upon the workers (App. No. 22 of 1943). Similarly the burden of proving that closure was not a lock-out would lie upon the employer.

1. Relating to an industrial matter in Schedule III or regulated by standing orders :—Sections 97 (1) (a) and 98 (1) (a) provide that commencement or continuance of a strike or lock-out shall be illegal, where it relates to industrial matters in Schedule III or regulated by standing orders, i. e. industrial matters in Schedule I or III. This provision has been inserted in this Act because the Labour Courts have been given special jurisdiction to decide finally disputes regarding industrial matters in Schedule III or arising from operation, application or interpre-

tation of standing orders. For the purpose of modification of any standing order, an expeditious procedure is provided by way of application to the Commissioner of Labour, without resorting to conciliatory procedure. Right of direct action has been prohibited in these petty disputes, which would be disposed of by impartial Tribunals.

2. Notice of change :—Sections 97 (1) (b) and 98 (1) (b) make the commencement or continuance of a strike or lock-out, without giving a notice of change, illegal. (See commentary under the heading "Notice of Change" under section 42.)

Misconception or misunderstanding is no ground for not giving notice :— Even assuming that there was no such misapprehension in the minds of the workers, that did not relieve them from the obligation to give a notice of change, if they wanted to go on a strike (App. No. 97 of 1944). To stop work without any notice amounts to an illegal strike, even if it is done by the workers on the apprehension that the management might discharge them, because that is not a valid reason when the management was prepared to allow them to work (App. No. 64 of 1940). Stoppage of work without any notice on a day which was wrongly taken to be a holiday on account of Holi festival amounts to an illegal strike, if the employees had actually observed the changed holiday (App. No. 23 of 1942). Although there may have been some misunderstanding on the part of the workers when they discontinued relay system, there was no justification for not reverting to relay system from the next day and onwards especially after the officials of the union had gone to the mills and removed any misunderstanding that may have existed (App. No. 29 of 1942). Even if the employees in the winding department thought that creeling was not a part of their legitimate work, which they were bound to do, it was not open to them to stop that work. The only course available to them was to resort to conciliation proceedings, and if those failed, to the Industrial Court (App. No. 3 of 1945). Under this Act in such a case where there is a grievance about "assignment of work in the establishment," which is an industrial matter specified in Schedule III, the workers cannot resort to a strike and the only course available to them is to approach the Labour Court for a decision of the dispute, after having approached the employer with a request for the change under section 42 (4).

Validity of notice—fresh demands in a subsequent meeting not to affect absent members :— If workmen by passing a resolution

in a meeting forward fresh demands and if in consequence of all the demands they go on a strike. those strikers who were not present at the meeting and who may have gone on strike in ignorance of what had passed at the meeting, cannot be held to be on an illegal strike (App. No. 36 of 1941).

*Notice to be given by workers, and they cannot take advantage of notice given by the mills :—*The notice of change contemplated is the notice to be given by the workers who wish to go on a strike. Even though the strike may be resorted to during the pendency of conciliation proceedings, arising out of the notice of change given by the mills, the workers cannot go on a strike with regard to any matter connected with the notice without by themselves giving a notice of change. If the employees were aggrieved by the enforcement of the terms of the agreement before it was registered, they could and ought to have given a notice of change asking the management not to put into operation the terms of the agreement before it was registered. As such a notice was obligatory, the strike resorted to without such notice is illegal (App. No. 117 of 1944).

But if the change is identically the same, no fresh notice of change is necessary to resort to direct action within two months after the completion of conciliation proceedings. If the employees start the conciliation proceedings, it is not necessary for the employer to give a fresh notice of change in the same proceeding in declaring a lock-out ; and if the employer starts the conciliation proceedings it is not necessary for the employees to give a separate notice of change of their own with regard to the same change or a change similar in all material particulars, if they want to go on a strike (App. No. 110 of 1945—followed in App. No. 131 of 1945). Even for an identical change a fresh notice of change will be necessary under section 42 (3) after the expiry of two months of the completion of conciliation proceedings, if direct action was not resorted to within that period ; and strike or lock-out without such fresh notice would be illegal.

3. Strike due to an illegal change or a breach of any standing order :—Section 97 (1) (c) provides a new provision to govern the case of an illegal strike, and there is no such corresponding provision for a lock-out. This is because the Act has provided for the special jurisdiction of the Labour Courts to require any employer to carry out any desired change or to withdraw an illegal change, and so the employees cannot resort to direct action on this ground. Even before this Act, this position was

recognized that whatever the grievances, whether legitimate or not, direct action by the employees would be illegal without giving a notice of change; which is further modified under this Act so as to completely withhold the right of strike on this ground as an effective remedy is provided for redress of such grievances.

Grievances as to illegal orders of the management:—If the workers demand that a particular worker should be reinstated as he is illegally discharged or dismissed (App. No. 44 of 1940); or that a suspended operative be given a suspension slip (App. No. 219 of 1943); or if they feel aggrieved at the improper discharge (App. No. 48 of 1941) or dismissal of a fellow worker (Appeal No. 1 of 1943—H. C.) or a Jobber (App. No. 26 of 1941) or against the appointment of a new weaving master (App. No. 14 of 1940); they are not justified in striking work or leaving their normal place of work on account of their supposed grievances, even if it be for a short time (App. No. 23 of 1943) or for the express purpose of approaching the authorities or the Labour Officer to represent their case without any intention to resort to a strike (App. Nos. 9 of 1942 and 1 of 1941). Such stoppage of work will amount to an illegal strike, if it is resorted to without any notice of change. Under this Act such a strike is completely prohibited.

Grievances as to wages and its payment:—If the employees have any grievance about the wages being low (App. No. 20 of 1942); or because delay has been made by the Labour Officer in taking steps for holding a meeting regarding their request for increase in wages (App. No. 57 of 1941); or because they desire to be paid on scale weight and not on standard or nominal weight as hitherto (App. Nos. 10 and 11 of 1940); or because they desire that unclaimed wages should be paid on a day other than that fixed under the standing orders (App. No. 5 of 1940—F. B.); or because there are discrepancies in pay-tickets (App. No. 1 of 1941); they cannot resort to a strike without giving a notice of change, also under this Act, for it relates to "wages including the period and mode of payment" an industrial matter specified in Schedule II which requires a notice of change.

Grievances as to working hours:—Strike for which the immediate cause was the change of the working hours from 9 to 10 hours which the management was empowered to do under the Factories Act, 1934, without any notice of change, was held to be illegal (App. No. 59 of 1941). Also when the workers demanded more cleaning time for cleaning the machines, about which the agreement

was silent, it was held that strike without any notice of change was illegal (App. No. 25 of 1941). The same position is under this Act for "working hours" is an item specified in Schedule II, which requires a notice of change.

Grievances as to distribution of foodstuffs :—Where the distribution of foodstuffs at cheap rates from the grain-shop opened by the mill was the privilege enjoyed by the employees, it was held that a strike resorted to for the purpose of remedying grievances about the distribution of foodstuffs without giving a notice of change was illegal (App. No. 7 of 1943). Under this Act such a strike is also prohibited for it relates to "amenities" which is an industrial matter specified in Schedule III.

Grievances as to assignment of work :—Even if the employees in the winding department thought that creeling was not a part of their legitimate work, which they were bound to do, it was not open to them to stop that work. The only course available to them was to resort to conciliation proceedings after giving a notice of change (App. No. 3 of 1945). The workers cannot go on a strike because they sympathise with the demand of *badlis* that they should be given work (App. Nos. 10 and 11 of 1940). Under this Act such strikes are completely prohibited for the matter "assignment of work" is specified in Schedule III.

4. If notice of change is given, before the commencement of conciliation proceedings :—Conciliation is the most essential feature of the Act, and direct action cannot be commenced or continued under sections 97 (1) (d) and (f) and 98 (1) (c) and (e), until completion of conciliation proceedings.

5. If conciliation proceedings have been commenced, before their completion :—Sections 97 (1) (e) and 98 (1) (d) provide that any strike or lock-out is illegal, if it is commenced or continued before the completion of conciliation proceedings. It has been, therefore, held that a strike resorted to after a notice of change, without completion of further proceedings, is illegal (App. No. 49 of 1941).

Section 63 relating to the completion of conciliation proceedings has been so interpreted that if there is no time-limit fixed either by a general or a special order and when there is no mutual agreement extending the period, the conciliation proceedings shall be deemed to be completed at the expiry of one month, even though the report may be published later on (Cf. App. No. 43 of 1946),

and, therefore, they will be deemed to be completed on the happening of any of those contingencies or at the expiry of one month, whichever is earlier.

*When one owner of two concerns, for one of which conciliation proceedings have been completed :—*In one case Sir Shapurji Broacha Mills Ltd., happened to own two different concerns, one relating to the cotton industry and the other relating to the woollen industry. The dispute before the Conciliator was in respect of the demand of the cotton textile workers only, and it did not relate to the dearness allowance being granted to the employees in the woollen industry. It was, therefore, held that completion of conciliation proceedings to which Sir Shapurji Broacha Mills Ltd. were parties only in respect of the cotton textile industry, would not make the strike by the employees of the woollen industry legal, only because one owner owned both the concerns (App. No. 6 of 1940-F.B.).

*When there are no new demands :—*When conciliation proceedings resorted to by the sole Representative Union demanding a grant of dearness allowance to neutralize completely the rise in the cost of living are completed, the strike resorted to within two months thereof is not illegal merely because another union had demanded 40 per cent. rise in wages and in pursuance of the leaflets of that union the workers had gone on strike, as such demand was substantially included in the former demand. It was further held that the letter written by the other union of which the employees were not members, and which was not authorized to address that letter, cannot be binding on the employees, and the strike cannot be said to be in pursuance of that letter, even if they went to strike on the appeal of that union by means of leaflets (App. No. 3 of 1940-F.B.).

*Period for direct action :—*Under the scheme of the Act it is open to the employer to declare a lock-out or to effect any change, and to the employee to resort to a strike, within two months after the completion of conciliation proceedings (App. No. 110 of 1945—followed in App. No. 131 of 1945). But after the expiry of that period of two months from the completion of conciliation proceedings, the commencement of direct action would be illegal under sections 97 (2) and 98 (2). Hence, strike or lock-out commenced within two months after the completion of conciliation proceedings is legal (App. No. 43 of 1946). In another case it was held that the mill-management was entitled to introduce change-over of shifts and transfer of operatives from day-shift to night-shift and *vice versa* after giving a notice of change and on failure of conciliation proceedings (App. No. 43 of 1944-F.B.).

6. After expiry of two months of completion of conciliation :—Sections 97 (2) and 98 (2) provide that though the parties are free to resort to direct action on completion of conciliation proceedings, they must exercise the right within two months thereof. Any strike or lock-out commenced at any time after two months of the completion of such proceedings is illegal. It may be noted that these sub-sections delete the words "or continued" after the word "commenced" from sub-section (1), because if the strike or lock-out had been already commenced within two months, it would have been legal and its continuation could not be forbidden.

7. Before a submission is lawfully revoked :—Sections 97 (1) (g) and 98 (1) (f) provide that where the parties have agreed by a registered submission to refer the dispute or such type of disputes to arbitration, until it is lawfully revoked, the parties cannot resort to direct action for the dispute would be finally decided in arbitration. It is but natural that until the agreement of voluntary submission is lawfully revoked, the right of direct action must be withheld.

8. Before the award comes into operation :—Under sections 97 (1) (h) and 98 (1) (g) when a dispute is referred to the arbitration of a Labour Court or the Industrial Court under section 58 (6) or 71, or to the Industrial Court under section 72 or 73, direct action is prohibited before the date specified in the award for its operation or the date of its publication, whichever is later.

It may be noted that though under section 72 reference can be made both to the Labour Court and the Industrial Court, this provision has been inadvertently drafted so as to exclude from its scope reference to a Labour Court under section 72. On the principle of harmonious and reasonable construction it seems that this section may be interpreted so as to include such reference also within its scope. Also the words "Labour or" before the words "Industrial Court" in the last line of section 98 (1) (g) have been omitted, which will have to be supplied.

9. In contravention of the terms of a registered agreement or a settlement or an award :—Sections 97 (1) (i) and 98 (1) (h) provide that any strike or lock-out is illegal, if it is commenced or continued in contravention of the terms of a registered agreement or a settlement or an award. It is but natural that so long as a registered agreement, a settlement or an award remains in force, the parties should not be permitted to resort to

direct action. With reference to the same subject matter, the parties cannot resort to direct action even after giving a fresh notice of change and failure of conciliation proceedings, so long as the registered agreement, settlement or award remains in force (App. No. 81 of 1944). But if during subsistence of a settlement relating to scales of wages, the employees propose a change about wage-rates in new conciliation proceedings started by the company in respect of increase in hours of work, and do not take part in the new conciliation proceedings if the question of wage-rates was not taken up, the new conciliation proceedings are not invalid, and if after failure thereof the company effects the proposed change about hours of work or enforces it by a lock-out there is no illegal change or illegal lock-out, because it is not in contravention of the terms of the subsisting settlement (Cf. App. No. 6 of 1945).

10. Prohibition of direct action under the Defence of India Rules :—If anybody contravenes the provisions of the general order issued under Rule 81A of the Defence of India Rules, which are continued by the Emergency Provisions (Continuance) Ordinance, 1946, and resorts to direct action, without giving notice or before the completion of conciliation or arbitration proceedings or after two months thereof, or instigates or incites others to take part or otherwise acts in furtherance thereof in contravention of this order shall be liable to three years' imprisonment or fine or with both. (See commentary under the heading "Compulsory conciliation or arbitration" under sections 71-73.)

Defences to an action for illegal strike or lock-out :—

(1) *Action does not amount to a strike or a lock-out :—*
If the application is for the declaration of an illegal strike or lock-out, it would be a good defence to prove that the action does not amount to a strike or lock-out as defined in the Act. A frequent defence is that the cessation of work or closure was not in consequence of an industrial dispute. Where, therefore, workers in a body demand a holiday for any purpose not connected with any industrial dispute, or intimate their desire to the employer and state further that they will not attend on that day even if the holiday was not granted, it can hardly be said that their cessation of work was in consequence of their demand being turned down and it would not amount to a strike (App. No. 4 of 1944-F. B.—wherein App. Nos. 2 of 1941 and 27 of 1942 followed). In case of a lock-out one of the ingredients is that it must be for the purpose of compelling workers to accept a condition. If the management wanted to punish the leaders

rather than to compel the workers to accept a condition, by locking them out, on the ground that they had not expressly given up their demand, although the whole body of workers was taken up without any such assurance, and no such assurance was ever asked, the lock-out would not come within the definition (App. No. 110 of 1945).

One important difference arises on this count. Under the Act there is no provision for an illegal change to be made by the employees, except for failure to carry out the terms of a settlement, award or a registered agreement, and the only application that can be made against them in case of cessation of work is for an illegal strike. Such declaration would not be granted unless the action came within the definition of a " strike " under section 3 (33). On the other hand even though the closure may not come within the definition of a " lock-out " under section 3 (24), an application for an illegal change would be maintainable against the employer, for he has no right to close down the undertaking for any reason not covered by standing orders permitting playing off (App. No. 4 of 1945), or justifying a temporary stoppage or closure. In such cases a declaration of an illegal lock-out cannot be granted, but a declaration of illegal change alone would be granted. (See commentary under the heading " Closure for reasons beyond control " under section 46.)

(ii) *Action threatened, but not resorted to*:—A lock-out does not take place on the day on which a notice of intention to declare a lock-out on a future date is given. It begins on the day when there is either the closing of the place or suspension of work or refusal to employ. If on that day the employees themselves came for work, and none of them was prevented from working, there could not be said to be any lock-out (App. No. 131 of 1945).

(iii) *Assurance of withdrawal of the pending application*:—If the person who has made an application for a declaration of an illegal strike wishes to withdraw it, there should be no objection in allowing him to do so. There is no question of compromise of offences under section 345 of the Criminal Procedure Code, 1898, and it cannot be contended that the Agent or the manager had no authority to compound the offences. If the applicant mill company had given an assurance to the opponents that if they abandoned the strike, the pending application would be withdrawn, the application could not lie and must be dismissed (App. No. 20 of 1943). But this would not apply in a case where an understanding was given by the mill company that it would not proceed against the workers under the Act, if they went back to work, for it could not alter the

merits of the case. Hence, the action of the workers would be declared to be an illegal strike in spite of such an understanding (App. No. 219 of 1943).

(iv) *Applicant has no locus standi* :—Under section 79 (1) only the employer or employee directly affected or the Labour Officer can file such an application for decision of an illegal strike or lock-out, so if the applicant has ceased to be an employee within the meaning of section 3 (13), the preliminary objection will be upheld.

(v) *Bar of limitation* :—Under the Bombay Industrial Disputes Act, 1938, no period of limitation was prescribed, but it was held in case of a strike that it should be filed immediately after the strike had commenced or in any case soon after it was over. It was also held that though the company was legally justified in filing such an application during the pendency of conciliation proceedings, it was very desirable that no such application should be made when the dispute was before the Conciliator, after resumption of work, for otherwise the workers might regard it as a threat for enforcing conciliation (App. No. 47 of 1946). Under this Act a definite period of limitation is prescribed in section 79 (4) for such applications for decisions of an illegal strike or lock-out. They are to be made to a Labour Court within three months of the commencement of the strike or lock-out; after which no application will be entertained.

(vi) *Time and intention are not relevant* :—Cessation of work even for a short time (App. No. 23 of 1943) or only to approach the authorities to represent the case, even without any intention to resort to a strike, would also amount to an illegal strike (App. No. 9 of 1942). In another case it was held that it was true that some out of many workers might not be in favour of the strike, but the question was to be determined not with reference to what their view of the strike was, but with reference to their actual conduct, otherwise everyone of the workers could come and say that he himself was against the strike but that he refrained from coming to work because other persons were striking work (App. No. 148 of 1943). But in a recent case it has been held that where only two hundred strikers acting in concert demanded that the Muslim workers should not be continued in employment, and if the remaining thirty-five hundred workers, who had also not started work, were in favour of amicably settling the matter and had held a meeting to adopt a resolution that work should be resumed jointly in collaboration with the Muslim workers, the cessation of work could not be due to any alleged common understanding. Therefore, if the persons who are joined as parties are not shown

to represent those two hundred workers, whose names cannot be ascertained, no declaration of illegal strike can be given; although the action of those two hundred workers came within the definition of a strike (App. No. 64 of 1946).

(vii) *Resumption of work no defence* :—Strike resorted to without notice is illegal even if on coming to know the reason of the strike the workers were advised to resume work immediately and they did in fact resume work (App. No. 119 of 1944). There is nothing in the Act to show that the strike must be in existence on the date of the hearing of the application, so the fact that it has ended on that date does not oust the jurisdiction of the Court (App. No. 2 of 1940).

Declaration can be against some persons only :—It is not necessary that all the employees should be made parties when the Court decides that the strike is illegal only with regard to the employees who are served to appear before it. The Court has power to give decision about the illegality of the strike which may be binding only on some of the employees (App. No. 2 of 1940; App. No. 64 of 1946).

Consequences of an illegal strike or lock-out:—

(1) Penalty :—(See section 102 for penalty for declaring an illegal lock-out, section 103 for declaring or commencing an illegal strike, and section 104 for instigating etc., such illegal action.) Direct action in contravention of the general order issued under Rule 81 A of the Defence of India Rules or incitement or instigation thereof etc., is punishable with 3 years' imprisonment or fine or with both.

Exemption from penalty : (i) *Action after due notice* :—It is not that all illegal strikes or lock-outs are punishable. Sections 97 (3) and 98 (3) provide important exemption clauses in cases of direct action resorted to, without giving a notice of change or without resorting to conciliatory procedure or before or after the expiry of two months after completion of conciliation proceedings and in case of a strike resorted to only for an illegal change or for breach of standing orders. In such cases no penalty shall be inflicted if such direct action is commenced after 14 days' clear notice to the employer or employees as the case may be and to the Labour Officer, and within six weeks of the expiry of the notice period. But the workers should resume work or the employer must discontinue the lock-out within forty-eight hours of the decision of illegality by a Labour Court or the Industrial Court, if they want to claim this exemption. **This exemption does not apply if the action is declared to be illegal**

by the Industrial Court under section 99 during the period of the notice or in cases of direct action relating to industrial matters in Schedule III or regulated by standing orders, or when there is a submission in force or before completion of arbitration, or in contravention of a registered agreement, a settlement or an award, which are provided in sections 97 (1) (a), (g), (h) or (i) and 98 (1) (a), (f), (g) or (b).

(ii) *When reasonable doubt about legality* :—Proviso to section 104 provides that no person shall be punished, for instigating or inciting others to take part in or otherwise acting in furtherance of a strike or lock-out, if the Court is of the opinion that in the circumstances of the case, a reasonable doubt existed at the time of the commencement of the offence about its legality.

(2) **Illegal strike amounts to misconduct** :—Striking work or inciting others to do so in contravention of the provisions of the Act amounts to a misconduct under standing orders. But that does not entitle the management to dismiss the employees forthwith (App. No. 4 of 1941). The employer was entitled under the Bombay Industrial Disputes Act, 1938, to take disciplinary action against such employees by way of suspension or dismissal after following the procedure provided in standing orders, without first obtaining the Court's order, as to the illegality of the strike, for the decision was required for prosecuting the offender and not for rendering the strike illegal (App. Nos. 15 and 16 of 1940; 46 Bom. L. R. 104). But under this Act in view of the amended section 101 (1) (g) it seems that no such disciplinary action can now be taken without first obtaining the decision of the illegality of the strike, otherwise the action of the management will amount to victimization. Also in case of strikes resorted to in retaliation to victimization by the employer, even if the employer hires others to take the place of strikers for continuing his business or undertaking, the striking employees retain their right of reinstatement and the employer cannot prevent them from returning to work. (See commentary under section 101).

(3) **Deduction of wages** :—(See commentary under section 3 (36) under the heading "Consequences of cessation of work".)

99. (1) The Provincial Government may make a reference to the Industrial Court for a declaration whether any proposed strike or lock-out of which a notice has been given would or would not be legal.

Reference to Industrial Court for declaration whether strike or lock-out is illegal.

(2) No declaration shall be made under this section save in open Court.

Reference to Industrial Court :—This is a new provision.

Consequence of the declaration of illegality :—If the Industrial Court declares such direct action to be illegal within the notice period, the clause relating to exemption from penalty under sections 97 (3) and 98 (3) will not apply, and the employer or employees would incur the penalties provided in the Act.

CHAPTER XV.

Courts of Enquiry.

Introductory :—The Provincial Government has taken the power under the Act, to set up one or more Courts of Enquiry, to inquire into industrial matters, pertaining to conditions of labour or relations of employer and employees in any industry, or any aspect of an industrial dispute, which may be referred to it or them. Such provision existed in the All India Trade Disputes Act, 1929, but the procedure in connection with the appointment of such Courts of Enquiry was so cumbrous and inconclusive in character that it had been reduced to a dead letter by the inactivity of the Government. This is a healthy provision, as it would enable the Government to procure necessary information regarding industrial matters of importance by means of an expert investigation, so as to take suitable measures to remove causes of discontent in labour problems even before an industrial dispute arises.

100. (1) The Provincial Government may constitute one or more Courts of Enquiry consisting of such number of persons as the Provincial Government may think fit.

Court of Enquiry :
constitution, duties
and powers of.—

(2) A Court of Enquiry shall inquire into such industrial matters, as may be referred to it by the Provincial Government, including any matter pertaining to conditions of work or relations between employers and employees in any industry, and any aspect of any industrial dispute.

(3) Every proceeding before a Court of Enquiry shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

Powers of Courts of Enquiry :—(See section 118.)

CHAPTER XVI.

Penalties.

Introductory :—This chapter substantially reproduces similar provisions contained in Chapter X of the Bombay Industrial Disputes Act, 1938, with certain modifications so as to afford adequate protection to employees against victimization and to give general concessions to Labour by reducing penalties in case of illegal strikes, and at the same time enhancing them in cases of illegal lock-outs and illegal changes. Also a new provision is made for efficient recovery of fines and compensation as arrears of land revenue.

Criminal liability of a limited company :—A limited company is a legal entity, and is quite capable of being an employer, and as any other person who is an employer, it is also criminally liable (*Obiter Dictum*—Criminal Reference No. 48 of 1941 per Beaumont C. J. and Sen J. in Rehmat Ali Dildar Ali v. Monogram Mills Co. Ltd.).

Proof for conviction :—Under the Bombay Industrial Disputes Act, 1938, the criminal courts were empowered to try offences under the Act, and so it was held that for conviction of an employer for an illegal change or lock-out, nothing more would be required than proof that a declaration of illegality was made by the Industrial Court, which order could not be called in question by any civil or criminal court (Criminal Revision App. No. 145 of 1945—*per* Weston and Bavdeker JJ.).

Under this Act Labour Courts have a concurrent criminal jurisdiction to entertain complaints for offences under the Act, and they will punish the offender if a decision of illegality is made, when a complaint has been filed.

Second complaint cannot lie :—Once a person is convicted or acquitted for an illegal change on the complaint of one of the applicants to the Industrial Court, a fresh trial for the same offence even on the complaint of another of the applicants, in whose favour the order of the Labour Court or the Industrial Court declaring an illegal change is made, is barred under section 403 of the Code of Criminal Procedure, 1898. The circumstance that a plurality of persons may be affected by an offence, is not conclusive that more than one offence has been committed. If the operatives desire that the employer should be punished for each individual act, affecting each individual operative, it is incumbent on

them to secure from the court an order or orders that a number of illegal changes corresponding to the number of operatives affected have been made. For, the order of the Labour Court or the Industrial Court cannot be called in question and parties are bound by the order when it declares that "It is *an* illegal change," and it is not open to read a plural when the court declares it in singular (Cf. Criminal Revision App. No. 145 of 1945—*per* Weston and Bavdekar JJ.).

Employer not to dismiss, reduce or punish an employee

101. (1) No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstance that the employee—

- (a) is an officer or member of a registered union or a union which has applied for being registered under this Act; or
- (b) is entitled to the benefit of a registered agreement or a settlement, submission or award; or
- (c) has appeared or intends to appear as a witness in, or has given any evidence or intends to give evidence in a proceeding under this Act; or
- (d) is an officer or member of an organisation the object of which is to secure better industrial conditions; or
- (e) is an officer or member of an organisation which is not declared unlawful; or
- (f) is a representative of employees; or
- (g) has gone on or joined a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provisions of this Act.

(2) No employer shall prevent any employee from returning to work after a strike, arising out of an industrial

dispute relating to any matter specified in Schedule I, II or III, which has not been held by a Labour Court or the Industrial Court to be illegal unless—

- (i) the employer has offered to refer the issues on which the employee has struck work to arbitration under this Act, and the employee has refused arbitration; or
- (ii) the employee not having refused arbitration, has failed to offer to resume work within one month of a declaration by the Provincial Government that the strike has ended.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall, on conviction, be punishable with fine which may extend to Rs. 5,000.

(4) The Court trying an offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

(5) In any prosecution under this section the burden of proving that the dismissal, discharge, reduction or punishment of an employee by an employer was not in contravention of the provisions of this section shall lie on the employer.

*Cf. Old Law :—*This section substantially reproduces section 64 of the Bombay Industrial Disputes Act, 1938, with certain important modifications. "Discharge" has been specifically included in the punishment contemplated by this section, and the burden of proof has been shifted to the employer to show that he has not victimized the employee. Also a new clause is inserted to punish the employer, if he prevents any employee from returning to work after a strike which has not been declared to be illegal. The penalty for victimization also has been increased from Rs. 1,000/- to Rs. 5,000/-. An important amendment is also made in sub-section (1) (g) by substituting the words "which has not been held to be illegal" for the words "which is not illegal", so that now no disciplinary action can be taken against the striking employees without obtaining a decision of illegality of the strike.

Victimization :—The section provides that the employer shall not terminate the employment of an employee by discharge, dismissal, or reduction, or punish him in any other manner only for any of the reasons specified in section 64 (1). Under section 64 (2) a new ground of victimization is provided for cases of locking-out the employees who have gone on a strike.

Punish in any other manner explained : Discharge :—

Cf. Old Law :—Under the Bombay Industrial Disputes Act, 1938, the word "discharge" was not used in the corresponding section 64 (1). The position in case of a discharge was not, therefore, free from doubt. The Industrial Court held "a discharge under Standing Order No. 19 (a) is not a punishment as such but merely an incident of the conditions of service" (App. Nos. 165 to 191 of 1943). This order could not be called in question under sections 60 in any civil or criminal Court, so as to hold it to be otherwise. But the High Court modified this view and held "It is true that a discharge is not a punishment '*as such*', but it may be a punishment if it is to serve as a penalty for some wrong or supposed wrong. Whether a discharge is or is not a punishment depends on the circumstances of each case; and hence, the wide expression 'punish him in any other manner' is purposely used to cover all such cases when an employee is intended to be penalised. The section is evidently intended to correspond to section 8 (4) of the National Labour Relations Act, 1935, of the United States of America, which penalises 'unfair labour practice' and says 'It shall be an unfair labour practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act'. (*Vide :—*Ludwig Teller's Law, governing Labour Disputes and Collective Bargaining, Vol. III, P. 1788.). This shows that the real test is wilful discrimination and the same is intended by the use of the wide expression 'punish him in any manner' in section 64 (1) of the Bombay Industrial Disputes Act". (Criminal Appeal No. 536 of 1944—*per* Lokur and Weston JJ.). The present Act has removed this ambiguity by expressly including "discharge" within the provisions of this section.

Complainant entitled to show the real reason and burden of proof :—Even though the reason stated for punishment is a reason, which does not fall within any of the seven clauses of sub-section (1) of this section (e. g. "creating trouble"), it is open to the complainant to show that it was not the real reason for the punishment, and that he was really punished by reason of some circumstances mentioned in one of these clauses (Criminal Appeal

No. 536 of 1944—*per* Lokur and Weston JJ.). It was further held in that case decided under the Bombay Industrial Disputes Act, 1938, that the burden of proving that the reason of discharge fell within the clause relied upon by him lay on the complainant. This part of the decision will not hold good because of the express provision to the contrary in section 101 (5), that the burden of proof lies on the employer to show that he has not contravened the provisions of this section.

Reason that an application has been made to be joined as a party :—To apply to be joined as a party does not mean to intend to be a witness or to give evidence, and such a reason does not fall within clause (c) of this section (Criminal Appeal No. 536 of 1944—*per* Lokur and Weston JJ.).

Dismissal of some representatives only for acts of misconduct :—If out of the ten representatives of employees from the two mills, only three have been dismissed for acts of misconduct and there is no suggestion even that others have been punished in the same way, the charge that the applicants were victimized cannot stand (App. Nos. 15 and 16 of 1940).

Strike must have been held to be illegal :—In view of the amendment in section 101 (1) (g) it is not now open to the management to take any disciplinary action against the strikers by way of suspension or dismissal for their misconduct without obtaining the decision of illegality of the strike, otherwise it would be guilty of victimization (*Contra* :—App. Nos. 15 and 16 of 1940 and 46 Bom. L. R. 104 will not hold good.).

Reinstatement of and compensation to retaliating strikers :—After and elaborate discussion on the well-known English, American and Australian cases, Sir H. V. Divatia, the President of the Industrial Court, as arbitrator re—The Indian United Mills Staff Union and the India United Mills Ltd. Bombay, at Bom. Lab. Gaz. Jan. 1947, Vol. 26 at p. 335 summarised the whole law on the point at p. 349 as follows :—"The irregularity or even the illegality of the strike does not affect the propriety of their discharge or dismissal if the strike was provoked by the Company on account of its own "unfair labour practice"; and if the strike took place because of the "unfair labour practice" of the company, it was not entitled to discharge or dismiss the employees as a disciplinary measure for going on strike without notice, even though some of them were holding responsible positions. So also, persuasion and even minor threats by the employees would not affect their right of reinstatement,

if they were improperly discharged as the strike was provoked by the Company. The only grounds in favour of their discharge or dismissal will be serious misconduct or violence to person or property". Another reason for ordering reinstatement would be the discrimination shown by the company in reinstating a large number of employees after a strike and refusing to reinstate others whose case was not different from those reinstated. On these principles all the striking employees, except those who had removed the telephone apparatus or thrown an electric bulb causing injury to some workers, were ordered to be reinstated, if they applied within a particular time, with their back pay from the date when they expressed their desire to call off the strike and resume work, except in cases of those employees who had secured employment elsewhere. But as the strike was resorted to without the requisite notice, the strikers were refused wages during the period of the strike. Also the chief engineer who was discharged simply because he was the Vice-President and a prominent leader of the Union was ordered to be reinstated and paid his back salary from the date of his discharge.

"The nature of the striking employees' right to reinstatement under the Act depends upon whether the strike is the result of an "unfair labour practice" or whether, on the other hand, it is simply the employment of the economic strike weapon in connection with a controversy on "current labour dispute" which involves no unfair labour practice. In the former case the striking employees upon termination of the strike possess the right of reinstatement, notwithstanding that the employer has hired others to take the place of the strikers for the purpose of continuing the operation of the plant or the business of the undertaking."—(Ludwig Teller's Law, governing Labour Disputes and Collective Bargaining, Vol. II p. 754).

*Preventing an employee who has gone on strike, not held to be illegal :—*If the management wanted to punish the leaders for going on strike rather than to compel the workers to accept any condition, by locking them out, the lock-out would not come within the definition of a lock-out under section 3 (29) and such closure if it is not justified under standing orders would only be declared as an illegal change and not as an illegal lock-out (App. No. 110 of 1945; App. No. 4 of 1945). In such a case under the newly enacted sub-section (2) the offence of victimization will arise under this section, unless (i) such strike has been declared to be illegal by a Labour Court or the Industrial Court, or (ii) it does not arise out of an industrial matter specified in Schedule I, II, or III, or (iii) the employees have refused arbitration offered by the employer on issues involved in the

strike, or (iv) the employees have failed to offer to resume work within a month of the declaration by the Provincial Government that the strike has ended. In case of political strikes or strikes which do not arise out of an industrial dispute relating to any matter specified in Schedule I, II, or III, the employer cannot be said to have victimized the employees if he prevents them from returning to work. Though in case of a complaint for victimization under this section, the Labour Court or the Industrial Court in appeal, may convict the employer for this offence, there is no provision for a mere declaration either by the Labour Court or the Industrial Court that the employer committed a breach of the provisions of this section by victimizing the employees (cf. App. No. 57 of 1940).

This sub-section (2), therefore, settles all doubts which could be raised under the previous law as to whether the employer who restarted an undertaking with new hands was bound to dispense with the new employees when the strikers chose to return to work, after a strike which was not illegal.

Compensation to the employee concerned :—Sub-section (4) of this section provides that the Court trying this offence may order, out of the fine recovered, such amount as it deems fit as compensation to the employee concerned. But this amount of compensation is to be paid out of the fine recovered, and the Court has no jurisdiction to direct the employer to pay additional amount of compensation or any amount in excess of the fine imposed, which it seems, can be done in case of penalty for an illegal change under section 106.

102. Any employer who has commenced a lock-out which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine which may extend to Rs. 2,500 and, in the case of the lock-out being continued after the lapse of forty-eight hours after it has been held or declared to be illegal, with an additional fine which may extend to Rs. 5,000 for every day during which such lock-out continues after such conviction.

Penalty for declaring illegal lock-out.

103. Subject to the provisions of sub-section (3) of section 97, any employee who has gone on strike or who joins a strike which a Labour Court holds or the Industrial Court

Penalty for declaring or commencing illegal strike.

has declared to be illegal shall, on conviction, be punishable with fine, which may extend to Rs. 10 and, in the case of his continuing on strike after the lapse of forty-eight hours after it is held or declared to be illegal, with an additional fine which may extend to Re. 1 per day for every day during which the offence continues subject to a maximum of Rs. 50.

104. Any person who instigates or incites others to take part in, or otherwise acts in furtherance of a lock-out for which an employer is punishable under section 102 or a strike for which any employee is punishable under section 103, shall, on conviction, be punishable with imprisonment of either description for a term which may extend to three months, or with fine or with both :

Penalty for instigating, etc., illegal strikes and lock-outs.

Provided that no person shall be punished under this section where the Court trying the offence is of opinion that in the circumstances of the case a reasonable doubt existed at the time of the commission of the offence about the legality of the strike or lock-out, as the case may be.

Explanation I.—For the purposes of this section, a person who contributes, collects or solicits funds for the purposes of any such strike or lock-out shall be deemed to act in furtherance thereof.

Explanation II.—A person shall be deemed to have committed an offence under this section if before an illegal strike or lock-out has commenced, he has instigated or incited others to take part in, or otherwise acted in furtherance of such strike or lock-out.

*Cf. Old Law :—*Sections 102 to 104 correspond to sections 65 to 67 of the Bombay Industrial Disputes Act, 1938. They provide penalties in case of illegal lock-outs or strikes. Penalty for continuing illegal lock-outs after conviction therefor has been enhanced from Rs. 200 to Rs. 5,000 for every day of its continuation, after the expiry of 48 hours from the decision of its illegality. Penalty

for illegal strike has been reduced from Rs. 25 to Rs. 10 for the offence. Also besides the newly created exemption clause in sections 97 (3) and 98 (3), a further exemption is made in favour of persons instigating or inciting such illegal strikes or lock-outs, if the Court is of the opinion that a reasonable doubt existed as to the legality.

Penalty for illegal lock-out or strike :—

(a) *Commencement* :—For conviction under sections 102 and 103 it is essential that the illegal lock-out or strike must have been commenced, otherwise the person is not punishable for an intended lock-out or strike, which is declared to be illegal by the Industrial Court under section 99.

(b) *Continuation* :—Continuation of a strike or lock-out is punishable under sections 102 and 103 only after the date of first conviction for its commencement, if 48 hours have elapsed after it has been held or declared to be illegal.

(c) *Instigating, etc.* :—Under the explanations I and II to section 104 the offence is deemed to have been committed by instigation or inciting others to take part in or otherwise acting in furtherance of a punishable strike or lock-out by contributing, collecting or soliciting funds etc., even before the commencement of such illegal strike or lock-out. Therefore, such acts would be punishable even though the strike or lock-out may not have commenced, if the intended strike or lock-out is declared to be illegal by the Industrial Court under section 99.

(d) *Penalty under Defence of India Rules* :—Strike or lock-out or instigation etc. thereof, in contravention of the general order issued under Rule 81A of the Defence of India Rules, which have been continued by the Emergency Provisions (Continuance) Ordinance, 1946, is punishable with imprisonment which may extend to three years or with fine or with both. (See commentary under the heading "Compulsory conciliation or arbitration" under sections 71-73.)

Exemption from penalty : (i) Action after due notice :—
(See commentary under sections 97 (3) and 98 (3).) It may be noted that though this exemption is specifically provided by the opening words "subject to the provisions of sub-section (3) of section 97" in section 103, it is not so provided in section 102, but on the principle of harmonious construction, section 102 also would be interpreted so as to provide for this exemption clause.

(ii) *Instigation etc. when reasonable doubt existed as to legality*:—Similarly, an exempting proviso is added to section 104 to remove hardship on persons who do not wilfully and wantonly flout law.

Decision necessary for starting prosecution, and not for rendering the strike or lock-out illegal:—Sections 102-104 are intended to punish illegal strikes, illegal lock-outs and instigation *etc.* thereof, provided they are held by the Labour Court or declared by the Industrial Court to be illegal, whether illegal act is committed before or after such declaration. Decision of illegality is required for starting the prosecution and not for rendering a strike or lock-out illegal. The fact that the sections provide for the punishment of those who have gone on or joined a strike or commenced a lock-out, which has been held to be illegal, shows that its intention is to make penal illegal acts committed, whether before or after such declaration. It could not have been intended to allow such illegal acts to be committed with impunity till the declaration of illegality (46 Bom. L. R. 104 *Emperor v. Khandubhai K. Desai*). Declaration is necessary only when the management desires to prosecute the offenders, and not otherwise (App. Nos. 15 and 16 of 1940).

105. If a Conciliator, a member of a Board or a Labour Officer or any person present at or concerned in any conciliation proceeding wilfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding be punishable, with fine which may extend to Rs. 1,000.

Penalty for disclosing confidential information.

Cf. Old Law:—This section reproduces the corresponding provision in section 68 of the Bombay Industrial Disputes Act, 1938.

106. (1) Any employer who makes an illegal change shall, on conviction, be punishable with fine which may extend to Rs. 5,000.

Penalty for illegal change.

(2) Any employer who contravenes the provisions of section 47 shall on conviction be punishable with imprisonment which may extend to three

months, or for every day on which the contravention continues with fine which may extend to Rs. 5,000, or with both.

- (3) The Court convicting any person under subsection (1) or (2) may direct such person to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue.

107. Any employer who acts in contravention of a standing order settled under Chapter VII shall, on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing contravention of such standing order, with an additional fine which may extend to Rs. 125 per day for every day during which such contravention continues.

Penalty for contravention of a standing order.

*Cf. Old Law :—*These sections correspond to section 69 (1) of the Bombay Industrial Disputes Act, 1938, which provided for penalty for any illegal change, and section 69 (2) which specifically dealt with the case of contravention of any standing order. Penalty is increased under this Act, and provisions are made for compensation in case of an illegal change and for compliance with orders of a Labour Court or an Industrial Court during the time specified in section 47.

Penalty for an illegal change :—

(a) *Making illegal change :—*An employer who makes an illegal change is punishable under section 106 (1). In view of the newly enacted section 46 (5) it seems that an employee also shall be deemed to make an illegal change by failing to carry out the terms of a settlement, award or a registered agreement. As no specific penalty is provided, the employee will be punished under section 109.

(b) *Contravention of section 47 :—*(See section 106 (2).)

(c) *Compensation to the person concerned :—*The court convicting an employer under section 106 (1) or (2) may direct him to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue under section 106 (3). But this compensation is not required to be paid only out of the fine recovered as under section 101 (4) relating to victims.

zation. The employer can be ordered to pay it in addition to the fine imposed.

Illegal change by contravention of standing orders :—

*Cf. Old Law :—*Breach of any standing order is covered under the general term "illegal change." It was, therefore, considered that as the Industrial Court declared an illegal change, even in case of breach of standing orders, the order of the Industrial Court could not be called in question by any criminal court, and so even for breach of standing orders, the employer was punished under section 69 (1) and not under section 69 (2) of the Bombay Industrial Disputes Act, 1938. This interpretation would be contrary to the principle of harmonious construction of a statute, and cannot be adopted under this Act., for it would make section 107 redundant and because the same Labour Court is invested with concurrent criminal jurisdiction. Section 106 will be restricted in its scope to illegal changes other than those made by contravention of standing orders, which will be governed by section 107. (See 45 Bom. L. R. 268—wherein it is held that a general clause could not be intended to repeal or reduce the effect of the special clause.)

*Penalty for contravention of standing orders :—*The employer, acting in contravention of a standing order shall, on conviction, be punishable under section 107. But in such a case there can be no order of compensation which can be made under section 106 in case of other illegal changes.

Dismissal or starting, alteration or discontinuance of shift-working :—These matters fall in items (3) and (5) in Schedule II and a notice of change is obligatory for making any change therein. If a person is, therefore, wrongfully dismissed or shift-working is started, altered or discontinued, otherwise than in accordance with the standing orders, illegal change may be committed for want of notice of change within the meaning of section 46 (2), as well as by contravention of standing orders within the meaning of section 46 (1). Such contravention would, therefore, be punishable also under section 106 with a heavier penalty, with liability to compensate the employee concerned.

*Wrongful dismissal is not a continuing offence :—*Weston J. observed in one case, " The Mills thought that by re-employing the dismissed operatives after a decision of an illegal change and discharging them the same day by paying 13 days' wages, they would obviate the risk of additional fine in case illegal change was consi-

dered to be a continuing offence. I find it difficult to understand how a wrongful dismissal can be said to be a continuing offence." (Civil Revision App. Nos. 138 of 1945 and 611 of 1944, Kasambhai Kalubhai v. Manager, the Maheshwari Mills Co. Ltd. Ahmedabad).

108. Any person who wilfully refuses entry to a Labour Officer or such officer of an approved union as is authorised under section 25 to any place which he is entitled to enter, or fails to produce any document which he is required to produce, or fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder shall, on conviction, be punishable with fine which may extend to Rs. 500.

Penalty for obstructing person from carrying out duties.

Cf. Old Law :—This section reproduces section 70 of the Bombay Industrial Disputes Act, 1938. (See sections 25 and 34 and relevant Rules in Appendix I.)

109. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs. 100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

Penalties for offences not provided for elsewhere.

Cf. Old Law :—This section reproduces section 71 of the Bombay Industrial Disputes Act, 1938, and makes a general provision to penalise any contravention of the provisions of the Act or the rules made thereunder, for which no penalty is specifically provided.

110. The amount of any fine imposed and any compensation directed by any Court to be paid under this Act shall be recoverable as arrears of land revenue.

Recovery of fines and compensation.

CHAPTER XVII.

Record of Industrial Conditions.

Introductory :—An important feature of the present Act is the elaborate arrangement it has made for maintenance of records of industrial conditions. The Provincial Government has assumed powers of maintaining records of industrial matters covered by the Schedules, and for that purpose may require any employer to maintain prescribed records and submit copies thereof. A provision is also made for an inquiry by the Government through authorised officers for the purpose of verifying the accuracy of these records. Proceedings held by such officers are invested with privileges and protection of other judicial proceedings. These provisions will enable the Government to supply accurate statistics and information to the Industrial Court, Labour Courts or conciliators for settlement of disputes referred to them.

111. The Provincial Government may in respect of
Record of industrial
matters etc. any industry—

- (a) maintain in the prescribed manner a record of industrial matters covered by the Schedules;
- (b) require any employer or employers generally to maintain and submit copies of a record in such form as may be prescribed of—
 - (i) data relating to plant, premises and manufacture,
 - (ii) other industrial transactions and dealings,

which in the opinion of the Provincial Government are likely to affect the matters specified in clause (a).

112. (1) For the purpose of verifying the accuracy of any records maintained by an employer under the provisions of section 111, an officer authorised by the Provincial Government may, subject to the prescribed conditions hold an inquiry and

Inquiry for verification of records.

may require any person to, and such person thereupon shall, produce any relevant record or document in his possession and may after reasonable notice, at any reasonable time enter any premises wherein he believes such record or document to be, and may ask any question necessary for verifying such records :

Provided that where such premises are not the usual business premises of a person, such officer shall not without the previous permission of the Provincial Government enter them under this sub-section.

(2) Any proceeding held by him for the purpose of obtaining information for such record shall be deemed to be a judicial proceeding within the meaning of section 192 of the Indian Penal Code.

Powers in inquiry :—(See sections 112 (1) and 118.)

CHAPTER XVIII.

Miscellaneous.

113. The Provincial Government may by notification in the *Official Gazette*, at any time, make any additions to or alterations in the industrial matters specified in Schedule I, II or III or may delete therefrom any such matter :

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the Provincial Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

114. (1) A registered agreement, or a settlement, submission or award shall be binding upon all persons who are parties thereto :

Agreement etc., on whom binding.

Provided that—

- (a) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors in interest, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made, and
- (b) in the case of a registered union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter,

shall be bound by such agreement, settlement, submission or award.

(2) In cases in which a Representative Union is a party to a registered agreement, or a settlement, submission or award, the Provincial Government may, after giving the parties affected an opportunity of being heard, by notification in the *Official Gazette*, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification :

Provided that before giving a direction under this section the Provincial Government may, in such cases as it deems fit, make a reference to the Industrial Court for its opinion.

(3) A registered agreement entered into by the representatives of the majority of the employees affected or deemed to be affected under section 43 by a change shall bind all the employees so affected or deemed to be affected.

115. An order or decision of a Labour Court or the Industrial Court against an employer shall bind his successors in interest, heirs and assigns in respect of the undertaking

Order or decision of
Labour Court or
Industrial Court on
whom binding.

as regards which it is made or given and such order or decision against a registered union shall bind all persons who were members of the union at the date of the order or decision or who become members of the union thereafter.

Cf. Old Law :—Section 114 reproduces the provisions in section 76 of the Bombay Industrial Disputes Act, 1938, except for the substitution of "registered union" in proviso clause (b) in place of the word "union" and for the newly enacted sub-section (3). Section 115 is newly enacted. Sections 114 and 115, when read with section 94, provide for the binding effect of a registered agreement, settlement, submission, award or a decision or order of a Labour Court or the Industrial Court; for which the corresponding provisions were in sections 76 and 59 of the Bombay Industrial Disputes Act, 1938.

Binding effect of a registered agreement, or a settlement, submission or award :—Under section 114 a registered agreement, or a settlement, submission or award shall be binding upon the following persons :—

1. **Parties** :—(a) *When employer is a party* :—When the employer is a party thereto the binding effect further extends to his successors in interest, heirs or assigns in respect of the undertaking, as regards which the agreement, settlement, submission or award is made.

(b) *When a registered union is a party* :—Under section 114 (1) proviso (b) when a registered union, which is not a representative of employees, is a party to an agreement, settlement, submission or award, the binding effect will extend not only to the present but also the future members. But when such a registered union acts as a representative of employees under section 30, the binding effect will be further extended to all the present and future employees in the industry in the local area, represented by the union, whether they are members or not, under the substantive part of section 114 (1) as they are all parties thereto (Cf. App. Nos. 33 and 42 of 1941-F.B.). Under section 66 of this Act a submission can be entered into by the employer with a Representative Union or any other union which is a representative of employees. In case of such a submission or award thereon, the binding effect will, therefore, extend to all the present and future employees in the industry in the local area who are affected by the dispute, whether they are members or not (Cf. App. Nos. 33 and 42 of 1941-F.B.).

2. Extension of binding effect to other employers and employees :—Moreover, in the case where a Representative Union is a party to a registered agreement, settlement, submission or award, section 114 (2) provides that the Provincial Government may, after giving the parties affected an opportunity of being heard by notification in the *Official Gazette*, extend the binding effect to such other employers and employees in such industry or occupation in that local area as may be specified in the notification, provided that before doing so the Provincial Government may refer the question for the opinion of the Industrial Court. In such a case the award will be applicable to those other employers, who were not originally parties to the submission, as well as their employees, whether present or future (App. Nos. 33 and 42 of 1941-F. B.). The provision in section 114 (2) is made only in the case when a Representative Union is a party to a registered agreement, settlement, submission or an award, and not where a registered union is a party, even though the registered union may be a representative of employees under section 30 (Cf. App. Nos. 33 and 42 of 1941-F. B.).

Considerations by the Provincial Government :—Where the disputes have already resulted in a registered agreement, settlement or award and the Provincial Government has to consider whether it should not be made binding upon parties who were not represented in such agreement, settlement or award, then in such cases the Provincial Government would undoubtedly have to consider the merits of the dispute and the agreement, settlement or award arising therefrom. But different considerations arise when an opportunity is given for showing cause why a submission should not be made binding, because in such cases the Provincial Government has not to consider the merits of the dispute which would be considered by the Arbitrator, but has only to decide why matters should not be made uniform by making the submission binding on persons who are not parties to such submission (App. No. 17 of 1940-F. B.).

Opportunity must be given :—Although the Provincial Government may have given an opportunity for being heard before a submission was made binding upon the mills not parties to it, yet it does not *ipso facto* make the award (given on the original submission) binding on them, if they are not summoned to appear and they do not appear nor they are represented when the submission is heard. A fresh opportunity must be given to them for being heard in respect of the submission which by reason of the previous notification has been made binding upon them (App. No. 17 of 1940-

F. B.). When a submission is made binding upon other non-member mills by a Government notification, the effect is not that the non-member mills become parties to the original submission, but that a fresh submission in terms identical with the original submission is made binding on the non-member mills and their employees. It cannot be said that the submission with regard to them is necessarily the same submission that was originally made when a submission is made binding on the parties by a special notification, but the fresh submission as between the parties to it remains effective inspite of the fact that an award has been made on the original submission and therefore, there can be an independant award on the subsisting submission (App. No. 55 of 1940-F. B.).

*How an opportunity may be given :—*In App. No. 17 of 1940- (F. B.), the Industrial Court brought to the notice of the Government that when they propose to exercise their powers under this sub-section (2), they should issue a notification well ahead of the time when the submission, which was proposed to be made binding was set down for hearing, and a copy of the notification should be sent to the office of the Industrial Court for necessary action, so that as soon as the copy was received, the secretary of the Industrial Court would take steps to inform the parties concerned, so that the whole matter might be disposed of at the same time (App. No. 17 of 1940-F. B.). Opportunity of being heard is deemed to be given to the parties concerned, if such notice is served on the representative of employees of the parties concerned who are entitled to act as such under section 30 (Cf. App. No. 55 of 1940-F. B.).

3. Agreement by the representatives of majority of employees affected :—Section 114 (3) enables the representatives of majority of the employees directly affected to enter into an agreement, without the aid of their representatives entitled to act for them under section 30. Such agreement would bind all the employees affected or deemed to be affected by the change. It may be noted that this sub-section is confined only to a registered agreement.

*Persons entitled to take benefit :—*Although there is no specific section relating to the persons who are entitled to take benefit of the award, it must be taken that the Legislature intended that all those persons who are to be bound by the award, must be the persons who are entitled to receive the benefit. Section 114 would apply to persons who are bound by the award as well as to those who are entitled to receive its benefit (App. Nos. 33 and 42 of 1941-F. B.).

Binding effect of the order, decision or award of:—

(a) *The Industrial Court* :—Section 94 provides for the binding effect of the order, decision or award of the Industrial Court on the parties, their representatives in interest and persons represented by them. Section 115, therefore, seems to create some difficulty so far as it purports to cover the binding effect of the order or decision of the Industrial Court, and a further difficulty arises by restricting the operation of the section only to the present or future members of the registered union, even when it may represent non-members, when it acts as a representative of employees under section 30. Under section 94 when the registered union represents non-members, the order, decision or award will bind them as well. (See commentary under section 94.)

(b) *Labour Court* :—There is no provision corresponding to section 94 for the binding effect of the order, decision or award of a Labour Court. Section 115 provides only for the binding effect of the order or decision of such court. The award of a Labour Court would be covered under the general section 114, under which the binding effect extends to the present or future employees of the registered union. It would be further extended to all the present or future employees in the centre, affected by the dispute, whether they are members or not, if such registered union acts as a representative of employees under section 30, as they are deemed to be parties (Cf. App. Nos. 33 and 42 of 1941-F. B.). Also there is no express provision to extend the binding effect to the parties who appeared, or were represented before the court or who were summoned to appear. There appears here to be an omission which should be rectified by the Legislature. It seems the court would be inclined to interpret this section on the analogy of section 94.

116. (1) A registered agreement, or a settlement
 Agreement, etc.,
 when to cease to
 have effect. or award shall cease to have effect on the
 date specified therein or if no such date is
 specified therein, on the expiry of the period of two months
 from the date on which notice in writing to terminate such
 agreement, settlement or award, as the case may be, is
 given in the prescribed manner by any of the parties
 thereto to the other party :

Provided that no such notice shall be given till the
 expiry of three months after the agreement, settlement or
 award comes into operation.

(2) Nothing in this section shall prevent the terms of a registered agreement or a settlement being changed or modified by mutual consent of the parties affected thereby.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement, or a settlement or award provides that it shall remain in force for a period exceeding one year, it may after the expiry of one year from the date of its commencement be terminated by either party thereto giving two months' notice in the prescribed manner to the other party.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Registrar and the Labour Officer of the local area concerned.

(5) If a registered agreement, or a settlement or award is terminated under sub-section (1) or (3) or if the terms of a registered agreement or a settlement are changed or modified by mutual consent, notice of such termination, change or modification shall be given by the parties concerned to the Registrar and the Labour Officer. The Registrar shall enter the notice of such termination, change or modification in a register kept for the purpose.

Explanation.—For the purposes of this section, parties who shall be competent to terminate a registered agreement, or a settlement or award, or to change or to modify the terms of a registered agreement or a settlement and who shall give notice of such termination, change or modification under sub-section (5) shall be the employer who has signed the agreement or settlement or who is a party to the award or the heirs, successors or assigns of such employer in respect of the undertaking concerned and the representative of the employees affected by the agreement, settlement or award.

*Cf. Old Law :—*This section substantially reproduces the provisions in section 77 of the Bombay Industrial Disputes Act;

1938, with certain modifications, so as to reduce the period of notice of termination from six months to two months, and so as to provide for the persons entitled to give notice of termination.

Period for which agreement, settlement or award will remain in force :—Under section 116 (1) and (3) it shall remain in force for the period stated therein, unless it exceeds one year in which case it may be terminated after two months' notice after the expiry of one year, or if no period is specified, at least till the expiry of three months from the date of its operation, after which it may be terminated after a two months' notice.

Modification of the terms of an agreement, settlement or an award :—(a) *By mutual consent :—*Section 116 (2) provides that even during the time such agreement or settlement remains in force, it is open to both the parties to supersede it by another agreement or settlement. But the modification of the terms of an award is properly left out of the scope of this section, because it is an award by a third party and the third party can always be moved by mutual consent to amend the award as was, in fact, done when the Industrial Court in September 1941 amended the Ahmedabad award, dated 26th April, 1940, by increasing the dearness allowance by 45 per cent. by mutual adjustment between the parties. (See Reference from the Registrar, dated 2nd November 1944, at Bom. Lab. Gaz. Jan. 1945, Vol. 24, P. 302.)

Contracting out of an award :—Though there is no express section in the Act corresponding to section 23 of the Payment of Wages Act, 1936, or section 17 of the Workmen's Compensation Act, 1923, by which contracting out is forbidden, there are two sections of the Act, however, which read together, prohibit any change in the terms of an award by mutual consent of the parties thereto. The combined effect of section 46 (3) and section 116 (2) is that although a registered agreement or settlement can be modified by mutual consent of the parties, an award cannot be so modified and if an employer attempts to do so, even with the consent of the other party such an attempt would not only be a change but an illegal change under section 46 (Cf. App. Nos. 33 and 42 of 1941-F.B.). If the employees enter into a specific agreement not to claim dearness allowance to which they are entitled under an award, the Court cannot take notice of it, for such contract whereby the employees waive their rights under an award is forbidden and therefore, failure to pay dearness allowance would

be an illegal change (App. No. 121 of 1943—wherein App. No. 33 of 1941—F. B. followed; App. No. 5 of 1942).

Procedure of change or modification :—Under section 116 (5) and explanation thereto the parties competent to change or modify the terms shall give a notice for the purpose as specified therein.

(b) *By unilateral act of one party* :—If both the parties are not willing to modify the terms of an existing agreement, settlement or an award, the party desiring a change affecting the terms thereof has to give a notice of termination under section 116 (1) or (3).

Notice of termination :—

1. *When can be given* :—Under section 116 (1) and (3) a two months' notice of termination of an agreement, settlement or award can be given only after the expiry of one year, if the period for its duration exceeds one year, or at the end of three months from the date on which it came into operation, if no period is specified for its duration.

2. *By whom and how to be given* :—Explanation to section 116 provides for the parties who are competent to give the notice of termination and the persons to whom copies are to be sent. (See Rules in Appendix I as to the manner of giving notice of termination.) Even after the notice of termination the parties are free to change or modify the terms by mutual consent, but if no such agreement is arrived at, at the end of two months, such agreement, settlement or award would be terminated, and a notice of such change, modification or termination shall be given by the parties concerned to the Registrar and the Labour Officer under section 116 (5).

3. *Notice of change given without terminating the existing agreement, settlement or award* :—If a notice of change is given without terminating the existing agreement, settlement or award, then on failure of the conciliation proceedings resulting therefrom, the parties are not at liberty to enforce any change in contravention of the terms of the existing agreement, settlement or award by resorting to a strike or a lock-out within a period of two months of the completion of such conciliation proceedings; because such change, strike or lock-out would be illegal (App. No. 81 of 1944—F. B.). But if during subsistence of a settlement relating to scales of wages, the employees propose a change about wage-rates in new conciliation proceedings started by the company in respect of increase

in hours of work, and do not take part in the new conciliation proceedings, if the question of wage-rates was not taken up, the new conciliation proceedings are not invalid, and if after failure thereof the company effects the proposed change about hours of work within two months, there is no illegal change, for it is not in contravention of the terms of the existing settlement (App. No. 6 of 1945).

117. Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised every member of the executive of the union, shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

Liability of the executive of a union.

Explanation.—For the purposes of this section, the executive of a union means the body by whatever name called to which the management of the affairs of the union is entrusted.

Cf. Old Law:—This section reproduces the provision in section 78 of the Bombay Industrial Disputes Act, 1938.

118. (1) For the purpose of holding an inquiry or proceeding under this Act, the Registrar, a Conciliator, Board, Labour Court in its ordinary jurisdiction, a Court of Enquiry and the Industrial Court shall have the same powers as are vested in Courts in respect of—

Powers of certain authorities to summon witnesses, etc.

- (a) proof of facts by affidavits;
- (b) summoning and enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examinations of witnesses.

(2) The Registrar, a Conciliator or Board shall also have such further powers as may be prescribed.

(3) For the purpose of obtaining the information necessary for compiling and maintaining the record under Chapter XVII the officer authorised under section 112 shall have the powers specified in clauses (b) and (c) of sub-section (1) and in sub-section (2).

Cf. Old Law :—This section reproduces similar provisions made under various chapters of the Bombay Industrial Disputes Act, 1938, and provides an additional power of issuing commissions for the examinations of witnesses, and invests the Labour Courts, Courts of Enquiry and persons authorised under section 112 for inquiry for verification of records with these powers.

The Registrar, a Conciliator and the Board shall have also such further powers as may be prescribed in the Rules. (See Rules in Appendix I.) The officers authorised by the Provincial Government under section 112 to make an inquiry for verifying the records of industrial conditions shall have these powers only in respect of the summoning and enforcing the attendance of any person and examining him on oath, and of compelling the production of documents, under clauses (b) and (c) of sub-section (1) of this section, and such other powers as may be prescribed in the Rules. (See Rules in Appendix I.)

119. The Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Assistant Labour Officer, an Arbitrator, a member of a Board, an officer authorised under section 112, a Judge of a Labour Court, a member of the Industrial Court or a Court of Enquiry and a member of the staff of any of the said Courts shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Certain officers to be public servants.

Cf. Old Law :—This section reproduces the provision in section 80 of the Bombay Industrial Disputes Act, 1938, and gives to the persons specified therein all the protection and privileges of a public servant.

120. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceed-

Provisions of Act VII of 1929 not to be affected.

ing shall be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act.

Cf. Old Law :—This section reproduces the provision in section 82 of the Bombay Industrial Disputes Act, 1938.

Trade Disputes Act, 1929, is not to be affected :—

This section provides that nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and that pending inquiry or conciliation under the Trade Disputes Act, 1929, shall not be interrupted by proceedings under this Act, and therefore, no conciliation or arbitration proceeding shall be held under this Act relating to any matter or trade dispute referred to and pending before a Court of Enquiry or a Board of Conciliation under the said Act. But from this it cannot be suggested that the provisions of the Trade Disputes Act, 1929, shall derogate from the provisions of this Act. If a strike is resorted to without following the procedure prescribed in the Act, it would be illegal, and *prima facie* all the workers who went on strike rendered themselves liable for punishment for misconduct under standing orders, and it was competent for the management to deal with those persons who participated in the strike as guilty of misconduct and take disciplinary action under the standing orders, without first obtaining the Court's order as to its illegality. (*Per*—K. B. Wassoodew J. (retired) in the report of the Court of Enquiry *re*. The Textile Mills, Bombay and its employees at 1946. B. G. G. Part I P. 2790.) Under this Act the decision of the Court must be first obtained.

121. The Bombay Trade Disputes Conciliation Act, 1934, shall cease to apply in a local area to any industry in respect of which the provisions of this Act have been brought into force in such local area.

Repeal of Bom. IX
of 1934.

122. The Bombay Industrial Disputes Act, 1938, is hereby repealed :

Repeal of Bom.
XXV of 1938.

Provided that—

- (a) every appointment, order, rule, regulation notification or notice made, issued or given

under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made or issued under the provisions of this Act, unless and until superseded by any appointment, order, rule, regulation, notification or notice made, issued or given under this Act;

- (b) any standing order settled, agreement registered, changes which have come into operation, settlements recorded or registered, submissions registered, awards made or orders passed by the Industrial Court, under the provisions of the Act so repealed shall be deemed to have been settled, registered, to have come into operation, to have been recorded, made or passed by the appropriate authority under the corresponding provisions of this Act;
- (c) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed shall not be affected and any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted and availed of as if the said Act had not been repealed and continues in operation;
- (d) any proceedings pending before the Industrial Court, conciliation proceedings, or any proceedings relating to the trial of offences punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been

repealed and continues in operation; and any penalty imposed in such proceedings shall be recorded under the Act so repealed;

- (e) a registered union or a Representative Union or a Qualified Union or other representatives elected, entitled to appear or act as the representatives of employees under the Act so repealed shall notwithstanding the repeal of the said Act, continue to act as the representatives of employees in any proceedings under this Act for a period of three months from the date on which this Act comes into force.

*Cf. Old Law :—*Section 121 reproduces section 83 of the Bombay Industrial Disputes Act, 1938 and section 122 provides for the repeal of the Bombay Industrial Disputes Act, 1938, which it replaces.

Repeal of the Bombay Industrial Disputes Act, 1938 :—Section 122 is a repealing section, which makes provisions for the transitional period by inserting saving provisoes (a) to (e) in the section.

How far the provisions of the Bombay Industrial Disputes Act, 1938, have been continued :—

(a) *Appointment, order, rule, regulation, notification or notice :—*Proviso (a) of section 122 provides for the continuance of every appointment, order, rule, regulation, notification or notice under this Act, in so far as it is consistent with this Act. Rules and notifications under the previous Act will continue until superseded by rules and notifications made and issued under this Act.

(b) *Standing Orders, agreement, changes, settlement, submissions, awards and orders of the Industrial Court :—*Proviso (b) of section 122 provides for the continuance of standing orders settled under the previous Act. Also agreements, settlements, submissions and awards and changes made and orders of the Industrial Court are deemed to have been made under the corresponding provisions of this Act. It may be noted that under section 35 (5) model standing orders shall apply to any undertaking until standing orders

in respect of the undertaking come into operation. It seems, therefore, that old standing orders will continue to apply as long as model standing orders are not framed. Thereafter model standing orders will apply until new standing orders are settled.

(c) *Right or liability accrued* :—Proviso (c) of section 122 saves any right, privilege, obligation or liability, acquired, accrued or incurred under the previous Act. In respect of causes of action which have accrued prior to this Act, the Bombay Industrial Disputes Act, 1938, will apply so far as it is not inconsistent with the provisions of this Act.

(d) *Pending proceedings* :—Similarly, proviso (d) of section 122 saves pending proceedings in conciliation or before the Industrial Court or relating to trial of offences before any Criminal Court, which will be completed according to the Bombay Industrial Disputes Act, 1938, and penalties provided in that Act will be imposed in respect of them.

(e) *Continuance for three months of representatives of employees* :—Proviso (e) of section 122 provides that a registered union or a Representative Union or a Qualified Union or other elected representatives of employees entitled to appear or act as the representative of employees under the Bombay Industrial Disputes Act, 1938, shall continue to so appear or act, for a period of three months after this Act comes in force, as representatives of employees in any proceeding under this Act. It may be noted, however, that section 31 provides that a registered union or a Representative Union entitled to act as a representative of employees, immediately before the application of this Act to the industry concerned, shall continue to so act for a period of six months from the date of its application thereto or until a representative of employees becomes entitled to act under section 30, whichever is earlier. It seems, therefore, that the proviso is restricted only to a Qualified Union or other elected representatives who have been elected for a particular change, who will continue to appear or act as representative of employees for a period of three months after the Act comes in force; while a registered union or a Representative Union will continue as provided in section 31. (See commentary under section 31.)

123. (1) The Provincial Government may by notification in the *Official Gazette* make rules
Rules. to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision such rules may be made for all or any of the following matters, namely :—

- (a) the authority to be prescribed under sub-clause (c) of clause (14) of section 3 ;
- (b) the manner in which the panels representing the interests of employers and employees shall be constituted and the manner in which vacancies in the Board of Conciliation shall be filled up under section 7 ;
- (c) the qualifications for being eligible to be appointed to preside over Labour Courts under section 9 ;
- (d) the form in which the registers of unions and the approved list shall be maintained under section 12 ;
- (e) the form of application under sub-sections (1), (2) and (3) of section 13 ;
- (f) the fee to be paid, and the form of certificate of registration to be issued, under section 14 ;
- (g) the fee to be paid under sub-section (1), and the manner of publication under sub-section (4), of section 16 ;
- (h) the fee to be paid under sub-section (1) of section 17 ;
- (i) the dates on which and the manner in which returns shall be submitted under section 19 ;
- (j) the manner of publication of orders under section 21 ;
- (k) the manner of registration of a union for more local areas than one under section 22 ;
- (l) the form of application under section 23 ;
- (m) the officers to be authorised under section 25 and the manner in which and the conditions subject to which the rights under that section shall be exercised ;

- (n) the fees to be prescribed under sub-section (6) of section 26;
- (o) the authority to be prescribed under clause (b) of sub-section (2), and the manner of determining the representative of employers under sub-section (3), of section 27;
- (p) the manner in which the persons shall be elected under sub-section (1), recalled under sub-section (4), the period for which and the manner in which they shall function and the manner in which vacancies shall be filled under-section (5), of section 28;
- (q) the manner of authorising a Qualified or Primary Union under clause (iii) of, the manner of accepting the terms of an agreement or settlement under proviso *Secondly* and the number of representatives and the manner of their election under proviso *Thirdly* to, section 30;
- (r) the conditions subject to which the powers of entry and inspection shall be exercised under sub-section (2) of section 34;
- (s) the manner of submission of draft standing orders under sub-section (1), and the manner of consulting the representative of employees and other interests under sub-section (2), of section 35;
- (t) the form of notice and the other persons to be prescribed under sub-sections (1) and (2), and the manner of approach and the period to be prescribed under the proviso to sub-section (4), of section 42;
- (u) the other persons to be prescribed under sub-section (3) of section 43;
- (v) the manner of forwarding the memorandum of agreement under sub-section (1) of section 44;

- (w) the manner of nomination of members by the union under sub-section (1), the appointment of the chairman and the manner in which he shall perform his duties under sub-section (2), of section 49;
- (x) the manner of conducting the proceedings of a Joint Committee under sub-section (2) of section 50;
- (y) the manner in which the memorandum of agreement shall be forwarded under sub-section (1), the form in which a special intimation shall be forwarded under sub-section (2), and the other persons to be prescribed under sub-section (4), of section 52;
- (z) the form in which the statement shall be forwarded under sub-section (1) of section 54;
- (aa) the manner of holding conciliation proceedings under sub-section (1) of section 56;
- (ab) the form in which the memorandum of settlement shall be drawn up, and the manner of its publication under sub-section (1) of section 58;
- (ac) the manner of giving notice under sub-section (2) of section 59;
- (ad) the procedure to be followed by a Conciliator or Board under sub-section (1) of section 60;
- (ae) the manner of publication of a submission under sub-section (3) of section 66;
- (af) the modifications to be prescribed under sub-section (2), and the manner of making the employers parties to arbitration under sub-section (3), of section 72;
- (ag) the manner of publication under sub-section (2) of section 74;
- (ah) the form and manner in which an application shall be made under sub-section (2) of section 79;

- (ai) the manner in which the record shall be maintained under section 111;
- (aj) the conditions to be prescribed under sub-section (1) of section 112;
- (ak) the manner of giving notice under section 116;
- (al) the further powers of the Registrar, a Conciliator or Board under sub-section (2) of section 118;
- (am) any other matter which is required to be or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

Cf. Old Law :—Section 84 of the Bombay Industrial Disputes Act, 1938, has been substantially modified in this section to provide for the rule making power in accordance with the scheme of the present Act. (See Rules in Appendix I.)

SCHEDULES.

Introductory :—*Importance of schedules in the working of the Act* :—The whole scheme of the Bombay Industrial Disputes Act, 1938, was that matters in dispute should be placed before a Conciliator, in case no arbitration was available, so that the Government might have an opportunity of considering his view and endeavouring to get the parties to come to a reasonable arrangement (45 Bom. L. R. 657 Khatau Makanji & Co. v. Deshpande); and that no strike or lock-out should be resorted to until the whole machinery of the Act provided for discussion and negotiation had been made use of. The Bombay Industrial Disputes Act, 1938, divided important industrial matters in two schedules. Industrial matters in schedule I were regulated by standing orders, which formed really the contract of employment, and schedule II contained all important industrial matters with which employers were more concerned. Whenever a change was desired by either party in any settled standing order, or by the employer in any industrial matter specified in schedule II or by the employee in respect of any industrial matter, even if it did not come under schedule II, it was obligatory to give a notice of change to the other side in the prescribed form. If both the parties arrived at an agreement in regard to the proposed change within the prescribed time, the agree-

ment was recorded by the Registrar, otherwise the dispute was referred to compulsory conciliation, unless arbitration was available.

The present Act has provided effective substitutes for the notice of change and has divided important industrial matters in three schedules. Industrial matters in schedule I are routine matters which are regulated by standing orders. Change in standing orders can be effected by a simple procedure of application to the Commissioner of Labour under section 38 (2) and changes arising out of operation, application or interpretation of standing orders can be obtained by an employee by means of an application to the Labour Court under sections 42 (4) and 79 (1). Industrial matters in schedule II are those with which the employer is more concerned, and change in which can only be made by giving a notice of change under section 42 and resorting to the conciliatory procedure, if no agreement is arrived at or no arbitration is available. The newly created schedule III provides for those industrial matters which form subject-matters of frequent complaints by employees, and change in respect of which can be had by an application to the Labour Court under sections 42 (4) and 79 (1), if the employer has failed to agree to such change in the prescribed period. Proposal for a change other than in any standing order can also be moved in the Joint Committee as well, where agreement may be arrived at, or failing agreement, conciliation may be resorted to. Thus it will be very clear that these schedules form the keystone of the Act, and a provision is made in section 113 for modification of the schedules.

Modification of Schedules :—Section 113 which reproduces section 72 of the Bombay Industrial Disputes Act, 1938, provides for the important power which is vested in the Provincial Government of modification in schedules, which play such an important role in the working of the Act. The procedure prescribed in section 113 of publishing the draft of modification for information and considering the suggestions or objections thereto is obligatory on the Provincial Government.

Record of industrial matters covered by schedules :—
(See sections 111 and 112.)

SCHEDULE I.

(Section 35.)

1. Classification of employees, *e.g.*, permanent, temporary, apprentices, probationers, badlis, etc.

2. Manner of notification to employees of periods and hours of work, holidays, pay days and wage rates.

3. Notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or departments.

4. Closure or reopening of a department or a section of a department or the whole of the undertaking.

5. Attendance and late coming.

6. Leave: conditions, procedure and authority to grant.

7. Holidays: procedure and authority to grant.

8. Liability to search and entry into premises by certain gates.

9. Temporary stoppages of work, including playing off, and rights and liabilities of employers and employees arising therefrom.

10. Termination of employment: notice to be given by employer and employee.

11. Suspension or dismissal for misconduct, suspension pending inquiry into alleged misconduct and the acts or omissions which constitute misconduct.

12. Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent or servant.

Cf. Old Law :—Schedule I to the present Act substantially reproduces schedule I appended to the Bombay Industrial Disputes Act, 1938, except for the following modifications :—(i) Item (3) of the schedule I to the Bombay Industrial Disputes Act, 1938, provided only "shift working," which is now replaced by the expression "Notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or depart-

ments." (ii) New item (4) is added in the schedule I appended to the present Act, which provides for "closure or reopening of a department or a section of a department or the whole of the undertaking," so as to distinguish it from playing off or temporary stoppages, covered by the present item (9). (iii) Item (5) of the schedule I to the Bombay Industrial Disputes Act, 1938, provided for "Leave and holidays : Conditions, procedure and authority to grant," which has been replaced by the items (6) and (7) in the schedule I to the present Act, except for the "Conditions of holidays," which words are deleted. (iv) Item (7) of the schedule I to the Bombay Industrial Disputes Act, 1938, did not expressly provide for playing off, as is now done under item (9) of the schedule I to the present Act. (v) Item (11) in the schedule I to the present Act further provides for "suspension pending inquiry into alleged misconduct" in addition to matters in item (9) in the schedule I to the Bombay Industrial Disputes Act, 1938.

Standing Orders regulate matters in Schedule I:—

Standing Orders settled under sections 35-37 are to regulate the relations between the employer and his employees with regard to all the industrial matters specified in Schedule I. In fact, they form a part of the contract of employment and are determinative of the relationship between the employer and his employees in respect of these matters under section 40.

Continuance of old standing orders :—Under section 122 proviso (b) standing orders for operatives and for clerks in the textile industry, settled under section 26 of the Bombay Industrial Disputes Act, 1938, are deemed to be settled under the corresponding provisions of this Act. But under section 35 (5) model standing orders shall apply in respect of an undertaking until standing orders settled under this Act come into operation. The combined effect of these two sections seems to be that old standing orders will continue to apply until model standing orders are framed, and thereafter until new standing orders come into operation under this Act, model standing orders will apply.

Whether Standing Order No. 9 for operatives—*ultra vires* :—Schedule I must be looked into to determine whether a particular standing order is *ultra vires* or not. Under the Bombay Industrial Disputes Act, 1938, item (3) in Schedule I mentioned "Shift working," and so it was held that standing order no. 9, which regulated it, was not *ultra vires*, for the word "shift working" was wide enough to include matters arising out of shift work-

ing (App. No. 62 of 1940). Under the present Act, however, the corresponding item (3) in Schedule I specifies "Notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or departments." Standing order no. 9 for operatives would, therefore, be *ultra vires*, under this Act in so far as it purports to provide for matters arising out of shift working.

Procedure for change in matters in Schedule I:—
(See pp. 136-137.)

Change in standing order:—If the workers are entitled to the payment of unclaimed wages only on a particular day of the week fixed under the standing order, and if they wanted the payment on any other day, it would not be a demand for a change in the standing order. However, it would constitute a change in an industrial matter in Schedule II (App. No. 5 of 1940). Therefore, the workers must give a notice of change and cannot make an application to the Commissioner of Labour for an alteration of the standing order as it stood.

SCHEDULE II.

(Section 42.)

1. Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to *force majeure*.
2. Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.
3. Dismissal of any employee except as provided for in the standing orders applicable under this Act.
4. Rationalisation or other efficiency systems of work.
5. Starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders applicable under this Act.
6. Withdrawal of recognition to unions of employees.
7. Withdrawal of any customary concession or privilege or change in usage.

8. Introduction of new rules of discipline or alteration of existing rules and their interpretation, except in so far as they are provided for in the standing orders applicable under this Act.

9. Wages including the period and mode of payment.

10. Hours of work and rest intervals.

Procedure for change in matters in Schedule II :—

(See pp. 136-137.)

Item (I) : Reduction.

Cf. Old Law :—Item (1) is substantially reproduced from item (1) in Schedule II to the Bombay Industrial Disputes Act, 1938, except for the addition of the words "in any occupation or process or department or departments or in a shift". Under the Bombay Industrial Disputes Act, 1938, it could be contended that no notice of change was necessary for closing a sub-department even if it involved reduction (App. No. 136 of 1945), but this amendment would include reduction even in any occupation, process, shift or a department so much so that even if the number of persons employed remained the same, reduction in one occupation, process or department or shift would be included although there may be corresponding increase in another occupation, process or department or shift.

Essentials of Reduction :—Reduction which would require a notice of change must fulfill the following requirements, viz :—
(i) it must be intended to be of permanent or semi-permanent character,
(ii) it must not be due to *force majeure*, and (iii) it must be in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift.

1. Permanent or semi-permanent character :—

(a) **Temporary reduction :—**A temporary reduction does not amount to an industrial change. It is not at all necessary to state it to be of a temporary character, if the facts show it to be so, e. g. when almost all the employees are taken back (App. No. 153 of 1943). A temporary reduction of one west coolie as an experimental measure without any intention of making a permanent or semi-permanent reduction, without any notice of change, is not illegal (App. No. 17 of 1941).

(b) **Closure of temporary shift :—**If a third shift functioned intermittently only in some months during two years, and if the

employees were not given permanent tickets although some of them had completed more than two months' service, it was only a temporary affair and closure of such shift did not involve any reduction of a permanent character in the number of employees (App. Nos. 163 and 164 of 1943—wherein App. Nos. 22 of 1940 and 1 of 1944 distinguished, and App. Nos. 37 of 1942-F. B. and 59 of 1943 followed).

(c) *Contractors' men* :—The contractor employs or dispenses with the operatives as necessitated by the circumstances of the work, and the number of persons employed by him varies from day to day. In such a case there could be no question of any reduction of permanent or semi-permanent character in the number of employees. It is also impossible to say that it amounts to reduction, when the old contract is terminated and another contractor comes in with presumably the same number of employees for the same work, if the old men were not given permanent tickets (App. Nos. 7 of 1942 and 37 of 1942-F. B.).

(d) *Frequent reduction in permanent strength* :—Frequent reduction in the permanent strength of employees in the winding department, whose names are on the muster roll of permanent operatives, without a notice of change would be illegal (App. No. 18 of 1940).

(e) *Discharge of employees* :—If a number of employees are discharged after giving fourteen days' notice and are reduced, and nobody else is appointed in their place and there is nothing to show that the management intended to appoint them or any other persons immediately after they were discharged, such reduction comes under item (1), in as much as it was intended to be of a permanent or semi-permanent character (App. No. 1 of 1944).

2. *Force Majeure: Term explained* :—The word "*force majeure*" was not defined in the Bombay Industrial Disputes Act, 1938, and must be given its ordinary dictionary meaning which is "irresistible compulsion". "The term is used with reference to all circumstances independent of the will of man and which are not in his power to control. War, inundations, epidemics, strikes, embargo and even a breakdown of machinery through accident were deemed *force majeure* (1920) 2 K. B. 714". Reduction in the number of employees owing to circumstances arising on account of war and beyond the control of the employer must be held to be due to *force majeure*. It requires no notice of change (App. No. 153 of 1943).

Reduction due to shortage of needles and yarn :—If certain employees were served with a notice to the effect that their services would be dispensed with for want of work due to shortage of needles, yarn etc. owing to war conditions, reduction is due to *force majeure* and is not covered by item (1), so it does not amount to an illegal change even if no notice has been given. In that case the employees could not be played off as standing orders had not come into operation for the mill concerned (App. No. 153 of 1943).

Reduction due to sudden stoppage of Government orders :—If a number of employees employed for the work of preparing machine gun belting for the Government are discharged after due notice and reduced for shortage of work as the Government stopped further orders, and there is nothing to show that the management appointed or intended to appoint any other person immediately after the discharge of the employees, the reduction is of a permanent character and is not due to *force majeure* and is covered by item (1), so it amounts to an illegal change. In that case also the employees were not played off under standing orders (App. No. 1 of 1944).

It may be noted here that if the closure of a department involves reduction in the number of persons employed of a permanent character or introduction of rationalisation, a notice of change is always necessary before such closure, and when standing orders are settled under this Act it must be in accordance with the standing order relating to closure which is provided in newly created item (4) of Schedule I. Under the existing standing orders temporary closure or playing off is governed by standing order nos. 16 and 18 and the closure is not justified except for *force majeure* reasons. (See commentary under the heading " closure for reasons beyond control " under section 46.)

3. Reduction of employees " in any occupation, process, department, departments or in a shift " :—Under the Bombay Industrial Disputes Act, 1938, it was held that if the strength of doffers remained the same it would not be a permanent or semi-permanent reduction if some of them were transferred from day duty to night duty. It was further observed that it was doubtful whether it could have been intended that the matter was not covered by item (1) if there was a fifty per cent. reduction in the weaving department and an addition of equal number of persons in the spinning department (App. No. 18 of 1940). In another case

it was held that if the Mule Department had to be closed down as the type of yarn manufactured on the mule frames was not required and the employees were asked to work in another independent Ring Frame Department, and they refused it and voluntarily remained absent without notice there was no illegal change as no reduction or rationalisation was proved by the employees to have been caused by such closure (App. No. 136 of 1945).

The effect of the amendment under the present Act is that reduction of persons employed in any shift, or in any department, occupation or process, even though there may be a simultaneous increase elsewhere, is covered up by item (1) so as to necessitate a notice of change. It would be now no defence to a case of reduction that the strength has remained the same by corresponding increase in another department or shift, or that employees were offered work in another department and they refused it.

Who can complain of reduction ?—A discharged employee ceases to be an "employee" within the meaning of section 3 (13) and he has no *locus standi* to complain about any illegal change on the ground of reduction (Cf. App. Nos. 16 and 28 of 1941; App. No. 112 of 1945). If at all reduction is effected the person who could complain is the Government Labour Officer (App. No. 16 of 1941). It seems that other employees continuing in employment after such reduction are the employees directly affected within the meaning of section 79 (1) and may file an application for an illegal change. Unemployment of persons previously employed in the establishment is specified to be an industrial matter in Schedule III for which any employee may approach the employer with a request for a change, and if he fails to accede to the demand, to resort to the Labour Court by an application under section 42 (4) within three months of such last approach to the employer.

Item (2) : Increase.

Cf. Old Law :—Item (2) in the present schedule II corresponds to the item (2) in schedule II of the Bombay Industrial Disputes Act, 1938, except for the deletion of the words "Demands for" at its commencement and the addition of the words "in any occupation or process." This amendment removes the complication created under the former Act, which restricted the scope of item (2) to demand for increase and made it inapplicable to a case where no such demand was made. The scope is further extended by

necessitating a notice of change in the case of a permanent increase in the number of employees even in any occupation or process. It is not clear why the words "in a shift" are not inserted in item (2), as is done in item (1), though it seems such increase also would fall within its scope.

Scope of item (2):—Item (2) covers any permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation, process, department or departments; and any such increase would require a notice of change. The only limitation is that the increase must be permanent or semi-permanent and not temporary or experimental. The scope of the item is not restricted only to the cases of demand for permanent increase, nor to the increase in a department, but it covers even increase in any occupation or process. If a permanent operative is transferred from one occupation or process to another even in the same department, the reduction and increase would be covered up by items (1) and (2), and a notice of change is obligatory on the employer.

Asking two employees to mind two looms:—The act of the employer in asking two employees to mind two looms, where formerly one employee worked two looms as a temporary measure on account of skilled persons being not available, does not come under item (2) of Schedule II as the number of employees has not been increased, and so no notice of change is necessary (App. No. 49 of 1940).

Permanent operatives treated as temporary:—Under the Bombay Industrial Disputes Act, 1938, it was held that where the allegation of certain permanent operatives was that certain persons in their department who should be treated as permanent operatives in view of the nature of work done were treated as temporary operatives, they were not even indirectly affected on the ground that the employer would thereby be able to increase the number of permanent employees within the meaning of item (2) of schedule II, for the item (2) referred only to a *demand* for such increase, which was not in that case, and therefore, they had no *locus standi* to file an application for an illegal change (App. No. 158 of 1943). Under the present Act although no demand is necessary, only the employees directly affected can file an application for an illegal change under section 79 (1), and so they have no *locus standi* even under this Act to file an application for an illegal change.

Item (3) : Dismissal

Cf. Old Law :—Item (3) substantially reproduces item (3) in schedule II to the Bombay Industrial Disputes Act, 1938, except for the deletion of the words "except in accordance with law", and thus covers only the case of dismissal of an employee, except as provided for in the standing orders.

Penalty for illegal dismissal :—Dismissal of an employee without following the procedure laid down in the standing orders would amount to an illegal change also for want of notice of change (App. Nos. 12 and 60 of 1940; App. No. 4 of 1941; App. No. 30 of 1941). Such dismissal will, therefore, amount to an illegal change for breach of standing orders under section 46 (1), and for want of notice of change under section 46 (2). On conviction, the employer may be penalized in case of such dismissal for an illegal change under section 106, which provides a heavier penalty with liability to compensate the employee than under section 107 for contravention of a standing order, where no compensation can be awarded.

(See Commentary under standing order nos. 22 and 25 for dismissal.)

Item (4) : Rationalisation or other efficiency systems of work.

Cf. Old Law :—Item (4) substantially reproduces item (4) in schedule II to the Bombay Industrial Disputes Act, 1938, except for the deletion of the words "Introduction of" at its commencement. The words "introduction of rationalisation" were interpreted as connoting certain stability or general applicability (App. No. 57 of 1940-F. B.). It was held under the Bombay Industrial Disputes Act, 1938, that if the mill wanted to try out an experiment only for a few days, before adopting the system as such, by discharging a few workers and directing others to attend to two sides of the machines and thus introducing a system of doubles in respect of a few machines (*vis.* 6 out of 88); it would not amount to the introduction of a system of rationalisation, whatever might be the motives that underlay the action of the management in taking the step (App. No. 57 of 1940-F. B.). Similarly, it was held in another case that by reducing a few hands and keeping the same number of machines working, a larger amount of work was taken from the remaining

workers, but item (4) referred to the introduction of a system of rationalisation, and not to sporadic, occasional and temporary and comparatively insignificant changes effected in the strength of employees engaged in a particular department according to the needs of that department (App. No. 18 of 1940). A system of rationalisation was deemed to have been introduced in another case where out of twenty-six machines in the Ring Frame Department of a mill, a system of doubles was introduced on twenty machines and which lasted for four months, and was discontinued only because the night shift had to be stopped owing to the riots, and it was held that such introduction of system of rationalisation without a notice of change was illegal (App. No. 27 of 1941).

Under this Act it seems that by the deletion of the words "Introduction of" the Legislature intends to extend the scope of item (4) even to such experimental rationalisation or efficiency systems, and it is not necessary that the system must have acquired certain stability. Notice of change is, therefore, obligatory under this Act for trying any efficiency system of doubles etc. or any system of rationalisation. But it seems that sporadic, occasional and temporary and comparatively insignificant changes effected in the strength of employees engaged in a particular department according to the needs of that department cannot be considered to constitute a system, and they would not be covered even under this amended item (4) of schedule II. The word "system" implies a permanent change and not a temporary arrangement to meet the exigencies of a department. (*Vide*—Ex. Justice K. B. Wassoodew's report of the Court of enquiry re. Textile mills, Bombay, at 1946 B. G. G. Part I, P. 2700.)

Item (5):—Starting, alteration or discontinuance of shift working.

Cf. Old Law :—Item (5) reproduces item (5) in schedule II to the Bombay Industrial Disputes Act, 1938, and covers starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders applicable under this Act.

Scope of item (5):—This item in schedule II is the counterpart of item (3) in schedule I of the present Act, which provides for "notice to be given to employees of starting, alteration and discontinuance of two or more shifts in a department or departments," so that starting, alteration or discontinuance of two or

more shifts after the notice provided in the standing orders would fall under item (3) of schedule I, but if it is not in accordance with the standing orders, it would fall under item (5) of schedule II.

Item (3) in schedule I of the Bombay Industrial Disputes Act, 1938, only mentioned "shift working," which was regulated by standing order no. 9. In spite of the change in item (3) in schedule I under the present Act, until new standing orders are settled or model standing orders are framed under this Act, the matter will be governed by standing order no. 9 settled under the Bombay Industrial Disputes Act, 1938, which is applicable under this Act under section 122 proviso (b). The word "shift working" was wide enough to include matters arising out of shift working, and standing order no. 9 was held to be *intra vires* (App. No. 62 of 1940). But under this Act it has only to provide for the notice of starting, alteration or discontinuance of two or more shifts, and it would be *ultra vires* in so far as it purports to provide for other matters arising out of shift working.

Standing orders must be in force :—Item (5) in schedule II necessarily implies that there must be standing orders in force at the time of the starting, alteration or discontinuance of shifts. When no standing orders are in force, there cannot be any discontinuance "otherwise than in accordance with the standing orders." This item in schedule II is the counterpart of the item of shift working in schedule I, so that shift working in accordance with the standing orders falls under schedule I, while starting, alteration or discontinuance otherwise than in accordance with the standing orders falls under schedule II. Therefore, in absence of any standing orders in operation at the material time, the discontinuance of night shift working cannot fall under item (5) of schedule II, and it would not be an illegal change (App. Nos. 1, 6 and 7 of 1939-F. B.).

Penalty for breach :—Standing orders regulating item (3) in schedule I will have to provide for the notice to be given to employees of starting, alteration or discontinuance of two or more shifts. Therefore, if a single shift is started or discontinued or altered, after the new or model standing orders come into operation, the matter would be governed by item (5) of schedule II and a notice of change and conciliation would be obligatory, on failure of which within two months the change can be effected. If no notice of change is given in case of starting, alteration or discontinuance of a single shift,

the action would be an illegal change, punishable under section 105 with liability to compensate. Also if two or more shifts are started, altered or discontinued without the requisite notice under the standing orders, an illegal change would be committed not only by breach of standing orders, but by failure to give a notice of change as the matter falls under item (5) in schedule II, and a heavier penalty under section 106 with liability to compensate may be imposed. Standing order no. 9 settled under the Bombay Industrial Disputes Act, 1938, provides a notice of one month in the case of discontinuance of a shift, if as a result thereof permanent employees are to be discharged. It further provides a weeks' notice at the time of recommencement.

Item (6) : Withdrawal of recognition to unions of employees.

Cf. Old Law :—Item (6) reproduces item (6) in Schedule II to the Bombay Industrial Disputes Act, 1938, except for the deletion of the words "or granting" after withdrawal, as the recognized unions have no special privilege under the present Act. Item (6), therefore, requires a notice of change only if such recognition is withdrawn.

Item (7) : Withdrawal of a customary concession or privilege or change in usage.

Cf. Old Law :—Item (7) exactly reproduces item (7) in schedule II to the Bombay Industrial Disputes Act, 1938, and covers (i) withdrawal of any customary concession or privilege, or (ii) change in usage, for which purpose a notice of change is obligatory.

Scope of item (7) :—Although there is no section in the Act which expressly saves the existing usages and customs, this item saves by implication all existing usages and customs, whether in favour of the employer or employees, because it provides that change in usage can be effected or a customary concession or privilege can be withdrawn, only after giving a notice of change and going through a process of conciliation. Acting, therefore, in accordance with custom or usage is making no change in an industrial matter (App. No. 50 of 1941-F. B.).

Withdrawal of a customary concession or privilege :—

Privilege :—The word "privilege" in the definition of an industrial matter in section 3 (18) is used in addition to the words "rights or duties of employers or employees." It should; there-

fore, mean something which cannot be demanded as of right and it is not, therefore, a duty on the part of the other party but a concession which is made without any legal obligation (App. No. 7 of 1943).

Distribution of foodstuffs :—The distribution of foodstuffs at cheap rates from the mill is a privilege enjoyed by the employees of the particular mill which opens a grain-shop, and therefore, comes within the definition of an industrial matter. It is also a matter pertaining to the relationship between the employer and employees, because it is as employees of the mill that they are entitled to the privilege of getting cheap foodstuffs from the grain-shop started by the mill. A strike resorted to for the purpose of remedying grievances about the distribution of foodstuffs, without giving a notice of change is illegal (App. No. 7 of 1943).

Repair of a defective loom :—Though it is customary for the management to repair a loom if it goes out of order, it cannot be called a customary concession or privilege. If the loom goes out of order, it is the business of the jobber on duty there to see that it is repaired and there is no question of withdrawal of any customary concession or privilege if the management neglects to repair it, and so there is no illegal change (App. No. 54 of 1940).

Demand of more cleaning time :—The demand that more cleaning time and facilities should be given than already granted to the employees falls under item (7) of schedule II relating to withdrawal of any customary concession or privilege or change in usage, and a notice of change is necessary before employees can go on strike (App. No. 25 of 1941).

Lien on a machine :—It is not the privilege of a worker to claim work on a particular machine. The employer does not commit an illegal change or violate any standing order by asking a worker to work or not to work on a particular machine, so long as wages remain the same and the nature of work also remains the same (App. No. 77 of 1945). Even if he has to operate temporarily on a machine carrying a higher salary without his consent, his disobedience to accede to the request of his jobber will not be justified, because change under item (7) of schedule II necessarily implies a permanent change and not a temporary arrangement to meet the exigencies of a department. (*Vide—Ex. Justice K. B. Wassoodew's report of the Court of Enquiry re. Textile Mills, Bombay, at 1946 B. G. G. Part I, P. 2790.*)

Change in usage :—Existing usages and customs are regarded as a part of the contract of employment and form a part of the terms and conditions of employment. If there be any departure from normality in respect of the terms and conditions of employment, then it would be a change technically so called, but acting in consonance with usage is making no change in an industrial matter (App. No. 50 of 1941-F. B.).

Playing off for trade reasons in Bombay :—Playing off for trade reasons, though not embodied in standing order nos. 16-18, was proved to be a custom and usage in Bombay for more than twelve years, and so acting in consonance with that established practice was not deemed to be an illegal change (App. No. 50 of 1941-F. B.)

Relay system long in vogue :—Where the relay system has been in vogue continuously since 1935 and onwards, whether voluntary or not, it must be regarded as a custom or usage within the meaning of item (7) of schedule II, and so if the employees desired a change in the system, the proper way for them to proceed was to give a notice of change (App. No. 28 of 1942).

Working on holidays in Ahmedabad :—The action of management in working a mill on a holiday (viz. Ramzan Id) contrary to custom and usage in the industry at Ahmedabad was held to be an illegal change committed in contravention of standing order no. 13 (App. No. 63 of 1940). It was held under the Bombay Industrial Disputes Act, 1938, " If the mill authorities begin to take an extra hour for every holiday that is given, even within the limits prescribed by the Factories Act, 1934, it may have to be considered in future whether such action would not be contrary to custom and usage in the industry at Ahmedabad. But occasional demands for extra work owing to extra holidays during the course of the week, within the limits prescribed by the Factories Act, 1934, are not contrary to custom and usage in the industry at Ahmedabad, and so notice of change would not be necessary for asking workers to work beyond the normal daily hours of work on such occasions, within the limit prescribed by the Factories Act, 1934 (App. No. 4 of 1941). Under the present Act, however, even if total weekly hours of work remain the same, such a change in daily hours of work is a change in " hours of work " within the meaning of item (10) of schedule II and would be illegal if no notice of change is given.

Granting holiday :—If the mill granted the Holi holiday to night shift workers in accordance with the custom and usage in the industry at Ahmedabad in accordance with standing order no. 13, there is no illegal change (App. No. 11 of 1942).

Conversion of a holiday :—If a working day is converted into a holiday and *vice versa*, in accordance with the provisions of the Factories Act, 1934, and the established practice, the employees are not entitled to remain absent or refuse work on the day, which though a scheduled holiday for the mill is converted into a working day (App. No. 71 of 1945).

Palli system :—The system is described in Mr. Justice Chagla's award. Under the system the employees on the permanent muster roll are selected for work everyday by rotation, if there is no sufficient work for all, and those who are sent back are said to be on "palli" or "waiting list"—(Award of K. B. Wassoodew, (retired) High Court Judge re. Mazagaon Dock Ltd., Bombay at 1946 B. G. G. Part I, P. 1721). The introduction of *palli* system, by which whenever there was a shortage of work a certain number of permanent workers were employed and others were played off, contrary to the usage and custom of the department without giving a notice of change, amounts to an illegal change (App. No. 84 of 1944).

Burden of proof of custom :—When a custom alleged in the application is denied by the opponents, and the applicants do not refute a statement made by the opponents alleging a contrary custom nor do they seek to prove that the custom is otherwise, then the applicants cannot rely upon the custom alleged in the application (App. No. 11 of 1942).

Item (8) : Introduction of new rules of discipline.

Cf. Old Law :—Item (8) substantially reproduces item (8) in schedule II to the Bombay Industrial Disputes Act, 1938, except for the insertion of the limitation "except in so far as they are provided for in the standing orders applicable under this Act". Item (8) covers introduction of new rules of discipline or alteration of existing rules and their interpretation, except in so far as they are provided for in standing orders.

Lock-out with option to resume :—If the employers were justified in declaring a lock-out they would be also justified in saying that the workers should return to work within a certain period, otherwise they would be locked out. This does not constitute either a

threat or a new rule of discipline under item (8) of schedule II, but is only an option given to the workers (App. No. 131 of 1945).

Item (9) : Wages.

Cf. Old Law :—Item (9) in schedule II to the Bombay Industrial Disputes Act, 1938, provided for "wages and total weekly hours of work," which are now provided for in items (9) and (10). The present item (9) specifically includes "the period and mode of payment of wages."

Wages :—(See commentary under its definition in section 3 (39).) Wages are a matter of right (App. No. 162 of 1943) and it is the scheme of the Act that no change affecting wages or the period or mode of its payment can be effected without giving a notice of change and going through the conciliation proceedings (App. No. 8 of 1940).

Wage-rates :—When the rate of wages is lowered, the fact that even under the reduced wages a worker gets more by reason of his turning out more work has no bearing on the question. Also it cannot be contended that each time a machine stops and afterwards begins work a new agreement is entered into with each worker and that, therefore, it cannot be said to be any reduction in wages, if the new agreement makes provisions for the lower rate of wages than the rate prevailing before the machines stopped work. For, otherwise, all that the mill will have to do is to stop machines working for a day or two and thereafter, contend that the workers were employed on a new and reduced rate of wages. This kind of interpretation would defeat the object of the Act and cannot be countenanced (App. No. 8 of 1940). Change in wages by reduction is taken to have been made when the reduced rates come into operation and not when such reduced wages are actually given to the operatives. If it was made before the Bombay Industrial Disputes Act, 1938, came into force, although reduced wages were actually paid after the Act came into operation, it does not come under item (9) and is not illegal (App. No. 2 of 1939-F. B.).

Stopping relay system :—Stopping of the relay system and the consequent reduction in wages without giving a notice of change is illegal (App. No. 4 of 1939-F. B.).

Rectification of a meter :—The rectification of a meter is only a routine act of the management connected with the machinery of the mill and is not an industrial matter, even though the earn-

ings of the workers are reduced thereby. It was not anything in the nature of an illegal change, and the mill was not bound to give any notice of change before rectifying the meter (App. No. 24 of 1941).

Neglect in repair of a loom :—If an operative is not able to work on a machine for some time on account of the neglect of the management in repairing it, and his daily earnings are reduced, that would not be a case of making a change with regard to wages (App. No. 54 of 1940).

Lien on a machine :—It is not the privilege of a worker to claim work on a particular machine. The employer, therefore, does not commit an illegal change or violate any standing orders by asking a worker to work or not to work on a particular machine, as long as wages remain the same and the nature of work also remains the same. So if the employee is unwilling to work on another similar machine, his services can be rightly dispensed with (App. No. 77 of 1945). Even if he has to operate temporarily on a machine carrying a higher salary without his consent, his disobedience to accede to the request of his jobber will not be justified, because change in item (7) of schedule II necessarily implies a permanent change and not a temporary arrangement to meet the exigencies of a department (*Vide* :—Ex. Justice K. B. Wossoodew's report of the Court of Inquiry re. Textile Mills, Bombay at 1946 B. G. G. Part I, P. 2790).

Change in khata :—It is not open to an employee to refuse to work in a different khata unless the change involved an alteration in his status or a decrease in his wages; and the burden of proving it is on the employee concerned (App. No. 43 of 1943).

Payment of unclaimed wages :—Where the demand was that unclaimed wages should be paid on a particular day instead of the day fixed by the management under standing order no. 8, it was held that although it was not a request for change of standing order as such, it would none the less amount to asking for a change in an industrial matter because it related to the payment of wages. The strike in consequence of the demand without a notice of change was held to be illegal (App. No. 50 of 1940—F. B.).

Increase in wages :—The change must be one which would, if not agreed to, lead to an industrial dispute. The view necessarily postulates that the change contemplated must be one which the employers could compel the employees to accept or which would

affect adversely the condition of workers (App. No. 4 of 1940-F. B.; App. No. 158 of 1943; App. No. 87 of 1944-F. B.). So grant of increase in wages is not a change, because even if it was not agreeable to the employees it was not incumbent on them to accept the increase in wages (App. No. 4 of 1940-F. B.; App. No. 158 of 1943). But if wages are increased so as to deprive the workers of a greater benefit under some settlement or an award, as in the case of the Ahmedabad Dearness Allowance award, which entitles a worker only to sixty six per cent. dearness allowance if the pay exceeds Rs. 75/- instead of the full dearness allowance payable when the pay does not exceed Rs. 75/- the grant of increase in wages so as to deprive the workers of the full dearness allowance would be an illegal change as it would, if not agreed to, lead to an industrial dispute and as it would adversely affect the condition of workers.

Item (10): Hours of work and rest intervals.

Cf. Old Law :—Item (9) of schedule II to the Bombay Industrial Disputes Act, 1938, provided for "total weekly hours of work" along with wages, while the present item (10) provides for "hours of work and rest intervals." The effect of the amendment would be that the present item (10) would include a change in daily hours of work, even though total weekly hours remained the same, and would require a notice of change to be given for such a change. Even rest intervals cannot be changed so as to adversely affect the conditions of employees without giving a notice of change.

Hours of work :—Under the Bombay Industrial Disputes Act, 1938, it was observed that there was nothing in the Act or in the standing orders which precluded the mill authorities from fixing daily hours of work on any particular day. Of course the fixation of daily hours and total weekly hours of work had to conform to the provisions of the Factories Act, 1934. It was held that where a mill occasionally worked an extra hour on a particular day to make up for loss of work on account of extra holiday during the course of the week, in accordance with the custom and usage in the industry in Ahmedabad, the action of the mill was perfectly legal (App. No. 4 of 1941). Under the present Act, however, even though total weekly hours of work may remain the same in accordance with the provisions of the Factories Act, 1934, the mill is not entitled to work an extra hour on any particular day, as such a change is a change in "hours of work" under item (10) of schedule II and a notice of change is obligatory.

SCHEDULE III.

(Section 42.)

1. Adequacy and quality of materials and equipment supplied to the workers.
2. Assignment of work and transfer of workers within the establishment.
3. Health, safety and welfare of employees (including water, dining sheds, rest sheds, latrines, urinals, creches, restaurants, and such other amenities).
4. Matters relating to trade union organization, membership and levies.
5. Construction and interpretation of awards, agreements and settlements.
6. Employment including —
 - (i) reinstatement and recruitment ;
 - (ii) unemployment of persons previously employed in the industry concerned.
7. Payment of compensation for stoppages.

Item (1) : Materials and equipment.

This item relates to adequacy and quality of materials and equipment supplied to workers. If the workers have any cause of complaint on the ground that the materials or equipment supplied to them are of poor quality or are inadequate for that kind of work, they cannot refuse to work. Their only remedy is to approach the employer in the first instance with a request for a change and then have recourse to the Labour Court.

Item (2) : Assignment of work and transfer of workers.

This item relates to assignment of work and the transfer of workers within the establishment. Therefore, the employees in the winding department think that creeling is not a part of their legitimate work, which they were bound to do, or if they are transferred against their will within the establishment, it is not open to them to stop work. The only course open to them

is to approach the employer, and if they fail to get the desired change to apply to the Labour Court (Cf. App. No. 3 of 1945).

Item (3) : Health, safety and welfare of employees.

This provision would ensure redress of all complaints of employees on the ground that their health or safety is affected or their welfare is neglected by the employer by not providing them with necessary facilities and other amenities.

Item (4) : Trade union organization, membership and levies.

Trade union activities must be encouraged, and so this provision is made to help labour to secure redress of any grievance against the employer as to trade union organization, membership or levies in connection therewith.

Item (5) : Construction and interpretation of awards, agreements and settlements.

Interpretation of awards, agreements and settlements is one of the most fruitful sources of trade disputes, and so it is necessary that questions of their construction and interpretation should be left to the Labour Courts for impartial, judicious and final disposal. Power of interpretation of awards was vested in the Industrial Court under rule 64 of the Rules to the Bombay Industrial Disputes Act, 1938, which is now given over to the Labour Courts. It was held under rule 64 that the opponents cannot insist that workers should make an application under the rule, if they do not want any interpretation of an award, being sure about the meaning of the words, although the opponents raise the question of the interpretation of the words used in the award (App. Nos. 132 to 140 of 1943). Under this act also application to the Labour Court will be necessary only if the workers seek interpretation or construction of an award, agreement or settlement.

Item (6) : Employment.

This item enables an employee to get the desired change in matters relating to his employment, including reinstatement if his services are terminated or recruitment to other services, and even in case of other employees who have been reduced or whose services have been terminated.

Reinstatement and compensation on reinstatement :—(See commentary under the heading under sections 66 and 101.)

Unemployment of persons employed :—Even if other employees in the establishment are discharged, dismissed or reduced, any employee in the establishment may approach the employer with a request for a change, and if he fails to agree can have recourse to the Labour Court within three months of such last approach to get the desired change.

Item (7) : Payment of compensation for stoppages.

This item specifically mentions payment of compensation for stoppages as an industrial matter, and even though the employees may have no legal right to it under the standing orders or the contract of employment, the employees will have a right to approach the employer with a request for its payment, and if he fails to concede to their demand, they will have a right to move the Labour Court within three months of such last approach to decide such dispute.

Compensation for closure for coal shortage :—(See commentary under the heading under section 66 at p. 200.)

Strike-wages :—If the strike is resorted to in retaliation to victimization by the employer, but without any notice, it would be illegal and the employees cannot be given wages during the period of the strike. (Re :—The India United Mills Dispute at Bom. Lab. Gaz. Jan. 1947, Vol. 26 at p. 335.).

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P. 56 line 13—add the figure "1" after the words "Sub. No. "

P. 57 line 19—substitute the figure "9" for "90" in the App. No.

P. 62 line 28—substitute the figure "4" for "49" in the App. No.

P. 84 lines 9, 10—add the words "to consist of" after the word "requires" and delete the words "to be present".

P. 147—substitute in the marginal note of section 46 "illegal" for "egal" change.

P. 159 line 19—substitute the figure "1946" for "1945" in the App. No.

P. 197 line 9—substitute the year "1946" for "1941" in Ref. No.

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